TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 139.

JAMES L. D. MORRISON, JULIA A. A. S. MORRISON, HIS WIFE, AND EDWARD ABEND, TRUSTEE OF THE SAID JULIA A. A. S. MORRISON, PLAINTIFFS IN ERROR,

vs.

SAMUEL JACKSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED JANUARY 24, 1874.

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a UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States, to the honorable the judge of the circuit court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the September term, 1873, thereof, between James L. D. Morrison, Julia A. A. S. Morrison his wife, and Edward Abend, trustee of said Julia A. A. S. Morrison, plaintiffs, and Samuel Jackson, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Nathan Clifford, senior associate justice of the Supreme Court of the United States, this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and seventy-three.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

AUSTIN DRAKE,
Clerk C. C. U. S., East. Dist. Mo.
By H. C. GEISBERG,
Deputy.

Allowed by

SAMUEL TREAT,
Judge.

UNITED STATES OF AMERICA,
Eastern District of Missouri, set:

In obedience to the within writ, I herewith send to the Supreme Court of the United States a duly-certified transcript of the record and proceedings in the within-mentioned case, with all things concerning the same.

Witness my hand, at office in the city of St. Louis, in said district, this 31st day of December, A. D. 1873.

AUSTIN DRAKE,
Clerk U. S. Cir. Court, E. Dist. Mo.
By H. C. GEISBERG,
Deputy.

(Indorsed:) United States circuit court, districts of Missouri. James L. D. Morrison et. al., plffs. in error, vs. Samuel Jackson, dft. in error. Writ of error to the circuit court of the United States for the eastern district of Missouri. Returned and filed 187 . clerk.

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a UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States, to the honorable the judge of the circuit court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the September term, 1873, thereof, between James L. D. Morrison, Julia A. A. S. Morrison his wife, and Edward Abend, trustee of said Julia A. A. S. Morrison, plaintiffs, and Samuel Jackson, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Nathan Clifford, senior associate justice of the Supreme Court of the United States, this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and seventy-three.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

AUSTIN DRAKE,
Clerk C. C. U. S., East. Dist. Mo.
By H. C. GEISBERG,
Deputy.

Allowed by

SAMUEL TREAT,
Judge.

UNITED STATES OF AMERICA,
Eastern District of Missouri, set:

In obedience to the within writ, I herewith send to the Supreme Court of the United States a duly-certified transcript of the record and proceedings in the within-mentioned case, with all things concerning the same.

Witness my hand, at office in the city of St. Louis, in said district, this 31st day of December, A. D. 1873.

AUSTIN DRAKE,
Clerk U. S. Cir. Court, E. Dist. Mo.
By H. C. GEISBERG,
Deputy.

(Indorsed:) United States circuit court, districts of Missouri. James L. D. Morrison et. al., plffs. in error, vs. Samuel Jackson, dft. in error. Writ of error to the circuit court of the United States for the eastern district of Missouri. Returned and filed 187 . clerk.

b The United States of America, to Samuel Jackson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein James L. D. Morrison, Julia A. A. S. Morrison his wife, and Edward Abend, trustee of said Julia A. A. S. Morrison, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Treat, one of the judges of the circuit court of the United States for the eastern district of Missouri, this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and seventy three.

SAMUEL TREAT,
Judge United States Circuit Court Eastern District of Missouri.

I acknowledge due and proper service of the within citation this day. St. Louis, Jan'y 13, 1874.

SAMUEL JACKSON,
By GLOVER & SHEPLEY,
His Attorneys.

(Indorsed:) United States circuit court, eastern district of Missouri. James L. D. Morrison, et. al. plffs. in error, vs. Samuel Jackson, dft. in error. Citation filed 187 . clerk.

1 UNITED STATES OF AMERICA,
Eastern District of Missouri, sct:

Pleas before the honorable circuit court of the United States, in and for the eastern district of Missouri, at the September term thereof, A. D. 1873.

TRANSCRIPT.

JAMES L. D. MORRISON AND JULIA A. A. S. Morrison his wife, and Edward Abend, trustee for Julia A. A. S. Morrison, plaintiffs, *vs.* SAMUEL JACKSON, DEFENDANT. } Petition in ejectment.

Petition filed.

Be it remembered that heretofore, to wit, on the 11th day of August, A.D. 1873, there was filed in the office of the clerk of the circuit court of the United States, in and for the eastern district of Missouri, a petition in ejectment, in words and figures following, to wit:

Petition.

UNITED STATES OF AMERICA,
Eastern District of Missouri:

In the circuit court of the United States within and for the eastern district of Missouri, September term, 1873.

JAMES L. D. MORRISON AND JULIA A. A. S. Morrison his wife, and Edward Abend, trustee for Julia A. A. S. Morrison, plffs., *vs.* SAMUEL JACKSON, DEFT.

2 Plaintiffs, James D. Morrison, and Julia A. A. S. Morrison his

wife, and Edward Abend, trustee of said Julia A. A. S. Morrison, state that they are all citizens of the State of Illinois; that the defendant is a citizen of the State of Missouri; that on the 7th day of July, 1873, the said plaintiffs were entitled to the possession of the undivided two-thirds part of the following-described premises, situated in the county of Saint Louis, and State of Missouri to wit: Lot numbered ten (10) of Pierre Chouteau's diagram of subdivision of U. S. survey numbered nineteen hundred and fifty-three, according to the plat of said subdivision filed in the recorder's office of St. Louis county, said lot ten (10) being in United States survey No. 1953, and containing forty-three & $\frac{65}{100}$ acres, more or less, and being so entitled to the possession thereof, that the defendant afterwards, to wit, on the 8th day of July, 1873, entered into said premises and unlawfully withholds from the plaintiffs the possession thereof, to their damage in the sum of one thousand dollars, & that said premises are worth ten thousand dollars.

Plaintiffs state that the monthly value of the rents and profits of said premises is five hundred dollars. Wherefore, they demand judgment for the recovery of the said premises from the defendant, and one thousand dollars damages for the unlawfully withholding of the same from the plaintiff, and for five hundred dollars for the monthly rents and profits from the rendition of judgment until the possession of the premises is delivered to the plaintiffs, & for costs.

JAMES L. D. MORRISON, *P. P.*
SAM'L N. HOLLIDAY, *Atty. for Plff.*

Whereupon there issued out of the clerk's office of the circuit
3 court of the United States in and for the eastern *eastern* district of Missouri a summons, in words and figures following, to wit:

Summons.

EASTERN MISSOURI DISTRICT, *set:*

The President of the United States of America, to the marshal of the eastern district of Missouri, greeting:

You are hereby commanded to summon Samuel Jackson, a citizen of the State of Missouri, that he be and appear before the honorable circuit court of the United States for the eastern district of Missouri, on the first day of the next term thereof, to be holden at the city of Saint Louis, in and for said district, on the third Monday of September next, then and there to answer the complaint of James L. D. Morrison, Julia A. A. S. Morrison his wife, and Edward Abend, trustee of said Julia A. A. S. Morrison, citizens of the State of Illinois, as set forth in the petition filed in said court on the eleventh day of August, A. D. eighteen hundred and seventy-three. Hereof fail not, and have you then and there this writ. Witness the honorable Nathan Clifford, senior associate justice of the Supreme Court of the United States, the 11th day of August, A. D. eighteen hundred and seventy-three. Issued at office in the city of Saint Louis, under the seal of said circuit court, the day and year last aforesaid.

[SEAL] AUSTIN DRAKE, *Clerk of said Court,*
By H. C. GEISBERG, *Deputy.*

Upon which summons the marshal of the United States for the eastern district of Missouri made the following return, to wit:

Marshal's return.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Executed this writ by leaving a copy of the same, together with a copy of the petition for the within-named Samuel Jackson, at his
4 usual place of abode at St. Louis County, within the eastern district of Mo., with a white person over the age of fifteen years and a member of his family.
August 23d, 1873.

C. A. NEWCOMB,
U. S. Marshal, E. D. Mo.,
By WM. H. BIERSTADT,
Deputy.

And afterwards, at the regular stated term of said circuit court, begun and holden at the city of Saint Louis, in and for the eastern district of Missouri, on the third Monday, the 15th day, of September, A. D. 1873, the following further proceedings were had in this case, on Wednesday, the 17th day of September, in said year, to wit:

Answer filed.

JAMES L. D. MORRISON ET AL., PLAINTIFFS,
vs.
SAMUEL JACKSON, DEFENDANT. } Petition.

This day comes the defendant, by attorneys, and files his answer to the petition herein.
The answer filed as aforesaid is in the words and figures following, to wit:

Answer.

In the circuit court of the United States for the eastern district of Missouri.

JAMES L. D. MORRISON & WIFE AND EDward Abend
against.
SAMUEL JACKSON.

EASTERN DISTRICT OF MISSOURI, *ss:*

And now comes the said defendant, and, for answer to the petition filed in this cause, denies that on the day named in the petition or at any time the said plaintiffs were entitled to the possession of the undivided two-thirds of the premises described in the petition, or that said defendant unlawfully withholds from plaintiffs the possession thereof, or that said plaintiffs are entitled to any damages, or that the
5 monthly value thereof is as therein stated. Defendant admits that he is in possession of all that portion of said lot number ten which lies northwest of the Pacific Railroad, containing about forty acres, but denies possession of the other portion.

And, for a further defence to the said suit, the said defendant states that said defendant, and those under whom he claims and derives his title to said premises, have, for more than ten years prior to the commencement of this suit, been in the quiet, uninterrupted, and exclusive possession of said premises, adverse to said plaintiffs, and to all those under whom plaintiffs derive their title.

GLOVER & SHEPLEY,
Attys. for Deft.

And afterwards, at said last-mentioned term of said circuit court, begun and held as aforesaid, the following further proceedings were had in this case, on Saturday, the 20th day of September, A. D. 1873, to wit:

Waiver of jury filed.

JAMES L. D. MORRISON ET AL., PLAINTIFFS,
vs.
SAMUEL JACKSON, DEFENDANT. } Petition.

This day come the parties, by their attorneys, and file an agreement in writing to waive a jury-trial herein.

The agreement filed as aforesaid is in the words and figures following, to wit:

Jury waiver.

In the circuit court of the United States for the eastern district of Missouri.

JAMES L. D. MORRISON & OTHERS,
vs.
SAMUEL JACKSON.

The parties in this cause waive a jury in the cause & consent to try by the court.

For Pl'ffs GLOVER & SHEPLEY,
For Defendant.
JAS. L. D. MORRISON,
Atty. for Plffs.

6 And on the 30th day of September, A. D. 1873, during the regular stated term of said circuit court, begun and held as aforesaid, the following stipulation, signed by the attorneys for the respective parties to this cause, was filed in this cause, to wit:

Stipulation and agreement to facilitate hearing of cause.

In the circuit court of the United States for the eastern district of Missouri, September term, 1873.

JAMES L. D. MORRISON, ADELE S. MORRISON, his wife, & Edward Abend, trustee, pl'ffs,
vs.
SAMUEL JACKSON, DEFENDANT.

In the above-entitled cause, in order to facilitate a hearing with as little inconvenience to the parties as possible, it is stipulated and

agreed as follows between the parties to the above suit, through their respective counsel, to wit:

First. That Gregoire Sarpy died in St. Louis in the year 1824, leaving three sons as his heirs, as follows: John B. Sarpy, Peter A. Sarpy, and Thomas Sarpy.

Second. That on the 11th day of August, A. D. 1842, both the said John B. Sarpy and Peter A. Sarpy were living.

Third. That afterwards, and before the first day of February, A. D. 1869, each of them had departed this life, having by last will & testament devised their entire estate, real and personal, to Virginia, John R., and Adele S., sole children of John B. Sarpy at the time of his death, and nieces and nephew of Peter A. Sarpy at his death.

Fourth. That the said John R. Sarpy died single and without issue, after the death of his said father and uncle, devising by last will his entire estate to Virginia S. Berthold, since intermarried with Armand Penguet, and to Adele S. Morrison, wife of James L. D. Morrison.

7 Fifth. That the said Armand Penguet and Virginia S. Penguet have conveyed all the interest and title of the said Virginia in and to survey No. 1953 to James L. D. Morrison before the commencement of this suit.

Sixth. That the said Edward Abend is a trustee, succeeding under the agreements of a certain marriage-contract between James L. D. Morrison and Adele S. Morrison, his wife, and claims no beneficial interest in this suit in his own right.

Seventh. That Madame Pelagie Chouteau, widow Labadie, died some time during the year 1813, leaving as her sole heirs four daughters and one son, viz, Emilia, who married Bernard Pratte; Sophia, who married August P. Chouteau; Antoinette, who married John Little; Pelagie, who married Gregoire Sarpy: and Sylvester, her son. The said Gregoire was the same person to whom the land was conceded by Delassus, lieutenant governor, in 1802.

Eighth. That these are the same parties who executed their deed, dated August 29th, 1817, to Wilson P. Hunt, which deed was recorded in recorder's office of St. Louis County, Sept. 1, 1817, in book , page 381, and under and through which deed the defendant claims title to the land which he is in possession of, as stated in his answer and in the petition mentioned, by mesne conveyance, commencing with a deed from Wilson P. Hunt's administrators to Pierre Chouteau, jr., bearing date 5th day of June, 1845. It is admitted that Wilson P. Hunt died about 1843, and that Anna L. Hunt was duly appointed by the probate court of Saint Louis county administratrix, and that said property in said deed described was duly ordered to be sold as being the property

8 of said Wilson P. Hunt, and was so sold for the payment of debts of said estate, and that a copy of such deed may be read in place of the original.

This admission on the part of plaintiffs shall not be held to bar or preclude them from objecting on the trial to the sufficiency of the execution or acknowledgment of said deed, or denying on the trial that said deed passed the title to the land in question, or any portion of it, or estop them from taking any legal exception as to the force and effect of said deed on the hearing, or its legal admissibility from facts disclosed upon its face.

Ninth. It is further agreed that the said Jackson has, for more than ten years next before the commencement of this suit, been in actual quiet, uninterrupted, contin'ous possession of said lots of land under claim of title thereto adverse to the whole wo'ld.

But nothing in this stipulation or admission shall be so construed as to estop the plaintiffs from maintaining and showing on the trial, by evidence and the law, that as to the land in question the statute of limitations has not run as a bar against the said plaintiffs, or those under whom the plaintiffs claim title.

Tenth. That if the plaintiffs are entitled to recover the whole or any portion of the land in survey No. 1953, possessed and claimed by the defendant, that the plaintiffs will be entitled, as damages, to one dollar, and that the monthly value of said premises recovered is 20 dollars.

Eleventh. That the admissions, agreements and stipulations, herein contained, have been made and entered into to facilitate the trial of this cause upon its merits, and are not to be set up, plead, or relied upon as an estoppel, or otherwise, against either of the parties thereto
9 in any other suit which may arise between them, or their privies, but are to apply in this suit only, in which they are agreed upon for the purposes aforesaid.

JAS. L. D. MORRISON,
Atty for Plffs.
GLOVER & SHEPLEY,
For Deft.

And afterwards, at said last-mentioned term of said circuit court, begun and held as aforesaid, the following further proceedings were had in this case on Tuesday, the 30th day of September, A. D. 1873, to wit:

Trial begun.

JAMES L. D. MORRISON ET AL., PLAINTIFFS,
vs.
SAMUEL JACKSON, DEFENDANT. } Petition.

This day come the parties, by their respective attorneys; the plaintiffs by Messrs. Jewett, Holiday, and Holmes, and the defendant by Messrs. Krum & Shepley; and this case being regularly called for trial, and both parties being ready, and an agreement in writing, signed by counsel, waiving a jury in this case, having been heretofore filed, said case was thereupon tried by the court, sitting as a jury, and was argued by counsel; but such argument not having been concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, at said last-mentioned term of said circuit court, begun and held as aforesaid, the following further proceedings were had in this case on Wednesday, the 1st day of October, A. D. 1873, to wit:

Trial continued.

JAMES L. D. MORRISON ET AL., PLAINTIFFS,
vs.
SAMUEL JACKSON, DEFENDANT. } Petition.

10 This day come again the parties, by their respective attorneys, as on yesterday, and thereupon said case was further argued by counsel; but such argument not having been concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, at said last-mentioned term of said circuit court, begun and held as aforesaid, the following further proceedings were had in this case on Thursday, the 2d day of October, A. D. 1873, to wit:

Trial continued.

JAMES L. D. MORRISON ET AL., PLAINTIFFS,
vs.
SAMUEL JACKSON, DEFENDANT. } Petition.

This day come again the parties, by their attorneys, as on yesterday, and thereupon the arguments of counsel were resumed, and at the conclusion thereof the case was submitted to the court upon the pleadings and proofs therein.

Case taken under advisement.

And, not being fully advised in the premises, the court takes the same under advisement.

And afterwards, at said last-mentioned term of said circuit court, begun and held as aforesaid, the following further proceedings were had in this case on Saturday, the 22d day of November, A. D. 1873, to wit:

Trial concluded.

JAMES L. D. MORRISON ET AL., PLAINTIFFS,
vs.
SAMUEL JACKSON, DEFENDANT. } Petition.

This day come the plaintiffs, by attorney, and this case having been heretofore tried by the court, sitting as a jury, (an agreement in writing to waive a jury being on file,) and having been argued by
11 counsel for the respective parties, and submitted to the court upon the pleadings & proofs:

Finding.

On consideration whereof, and being now fully advised in the premises, the court finds for the defendant on the issues joined herein, and returns a special finding of the facts as proven on the trial, which is ordered to be filed and made a part of the record in this case.

Judgment.

It is therefore now considered by the court, that the plaintiffs James L. D. Morrison, Julia A. A. S. Morrison, his wife, and Edward Abend, trustee of said Julia A. A. S. Morrison, take nothing by their writ herein, and that the defendant, Samuel Jackson, go hence without day and recover against said plaintiffs the costs in this behalf expended, and that execution be issued therefor.

The special finding of the court, filed as aforesaid, is in the words and figures following, to wit:

Special finding of the court.

JAMES L. D. MORRISON ET AL.
vs.
SAMUEL JACKSON.

This case having been tried by the court without the intervention of a jury, pursuant to an agreement in writing duly signed, the court doth find specially the following facts:

On the 26th October, 1802, Gregoire Sarpy, resident at St. Louis, presented his petition to Charles Dehault Delassus for a concession, of which the following is a translation:

Petition of Gregoire Sarpy to C. D. Delassus for a concession, Oct. 26, 1802.

Mr. Charles Dehault Delassus, lieutenant-governor and commandant-in-chief of this part of Illinois:

Mr. Gregoire Sarpy, inhabitant of this city, has the honor to
12 represent to you that having constructed a mill for superfine flour, and said mill having, by its erection, led him into very extensive expenses, in order to recover a little more completely from his expenses and advance the utility of said establishment to the highest degree, he has caused to be added to this first mill another to saw timber, which will be of great advantage for the upper part of this colony; but said establishment being entirely out of timber, he begs you, sir, to concede to him the quantity of 6000 arpents of land in superficies, to be taken from along the river Des Peres, and in the woodland parts that belong to the domain of the King, having to observe to you that these lands, being extremely cut up and hilly, the wood is only found in clusters more or less large. The petitioner, convinced of the interest you show for all establishments useful and advantageous for the public, hopes this favor of your goodness.

St. Louis, October 26th, 1802.

(Signed) GREGOIRE SARPY.

The following is a translation of the concession granted by said Delassus, and of the survey, with accompanying descriptive plat, by Antoine Soulard, all of the foregoing documents being found of record in the office of U. S. recorder of land-titles in St. Louis, Missouri:

Concession granted by C. D. Delassus to Gregoire Sarpy, Oct. 28, 1802.

SAINT LOUIS OF THE ILLINOIS, *October 28th*, 1802.

Having seen the above, and whereas it is to my knowledge that in the neighborhood of this city, and in the establishment possessed by the petitioner, he does not make much building-lumber, and it is indispensable that he may make some profits of his enormous expenses in
13 said construction, which will become of public utility, I do concede for him and his heirs the land which he solicits, if it does not prejudice to any person, and the surveyor of this Upper Louisiana, Mr. Antoine Soulard, will place the interested party in possession of the quantity of land which he asks in the indicated location. This done, he will make a plan, which he will deposit at this post, and a certificate which will serve to obtain the concession and the legal title from the intendent-general, to whom belong, particularly, by royal decree, the granting of and conceding of all the classes of vacant lands.

(Signed) CHARLES DEHAULT DELASSUS.

(Here follows map marked page 13.)

Surveyor's note.

14 NOTE.—The limits placed at all the angles and the boundaries at 20 arpents between each other, are all indicated in the figurative plan. All the trees on the lines are distinguished with an upper blaze and two inferior longitudinal cuts, and those to right or left blazed only. Entered in book B of the expositions of surveys for this part Fo. 5, No. 3.

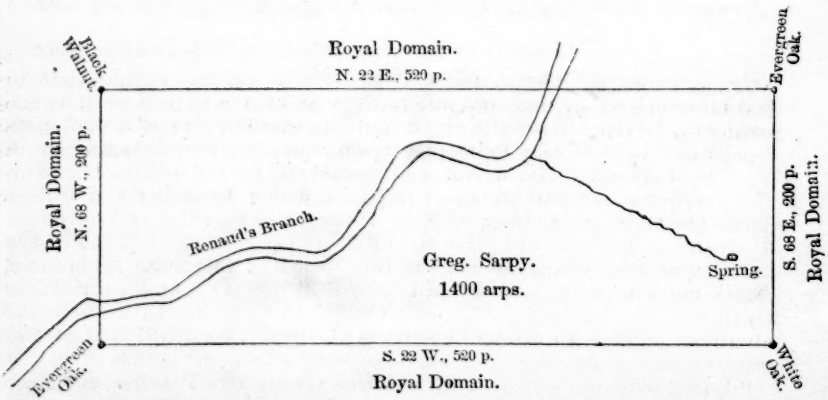
Surveyor's certificate.

I, Antoine Soulard, surveyor part of the Upper Louisiana, do certify that a land of 4002 arpents was measured, marked, and limited in favour and in presence of Gregory Sarpy; the said gentleman reserving to himself the faculty of choosing the complement of his concession, which is of 6,000 arpents of superficies, in one or more vacant portions of the royal domain, measured with the perch of the city of Paris, of 18 linear king's feet measure of the said city in this province.

The said land, situate at about 8 miles from the Meramec River ford, and at the same distance S. W. of said city of Saint Louis, is bounded as follows: On N. in part by the uncleared lands of the royal domain and by the lands of Mr. Charles Gratiot and of Mrs. Widow Camp, on S. and W. by the lands of the royal domain, on E in part by the aforesaid royal domain and the lands of the same owners aforesaid. Said surveys and measures were made without touching the variations of the magnetic needle, which is 7 deg. 30 min. E., as it is ascertained in the figurative plan which precedes, in which are noted the dimensions and rhumbs of the limits and other landmarks, etc. Said survey was performed in virtue of the royal decree of sir lieut. governor and under delegate of the royal domain, Chs. Dehault Delassus, dated October 28th of the last year, to which is joined the title of prop-
15 erty, and in order that all which is referred to it be acknowledged, I do give these presents, with the figurative plan which precedes, according to diligences practiced by the lieut. surveyor, Mr James McKay, in date of March 18, 1803.

ANT. SOULARD, *Surv. Part.*

Spanish survey.



Surveyor's note.

NOTE.—The landmarks put at the four angles are indicated in the figurative plan. All the trees on the lines are distinguished with a blaze superior and two longitudinal cuts inferior, and those on the right and left blazed only. Entered in Book C of the esp. of surveys for this part, Fo. 63, No. 63.

Surveyor's certificate.

I, Antoine Soulard, surveyor part of the Upper Louisiana, do certify that a land of 1,400 arpents of superficies was measured, limited, and bounded in favour of Mr. Greg. Sarpy, in presence of the lieut. surveyor as attorney of said owner, it being a part of the totality of 6,000 arpents of superficies which was conceded him, as it is ascertained by data here expressed; of said quantity a part of 4,002 arpents of superficies was previously measured at the river Des Peres, as shown by the certificate of the two surveys that I enter. The totality of the two surveys
16 makes 5,402 arpents of superficies, to which lacks the quantity of 598 arpents to complete the totality of the 6,000 arpents which were conceded to him by the lieut. governor, which were measured with the perch of the city of Paris, of 18 linear king's feet of the same city, according to the agrarian measure of this province. The said land is situated at about 20 miles southwest of Saint Louis, bounded E. N. E., S. S. W., E. S. E., W. N. W. by the vacant lands of the royal domain. These surveys and measures were made without regard to the magnetic needle, which is 7 deg. 30 min. E., as shown by the figurative plan which precedes, in which are indicated the dimensions and rhumbs of the landmarks, and other limits, &c. The said survey is made in virtue of the decree of C. D. Delassus, lieut. governor and subdelegate of the royal domain, dated October 28th, 1802, which is annexed thereto; and for all which is above, I do give these presents, with the figurative plan which precedes, drawn in conformity to diligences made by the lieut. surveyor, Mr. John Terrey, in date of January 2, 1804, who signed the minutes of what I give.

(Signed) ANT. SOULARD, *Surv. Part.*

ST. LOUIS OF THE ILLINOIS, *April* 15, 1804.

Proceedings board of commissioners.

Said documents, with claims based thereon, were duly presented to the board of commissioners, under the acts of Congress of 1805 and 1807, by said Gregoire Sarpy, and the proceedings of said board state that "he claims thereunder 6,000 arpens of land situate in two places, viz: 4,002 arpens on the river Des Peres and 1,400 arpens on the Maremec, in the district of St. Louis, granted to said Sarpy by virtue of a grant
17 or concession from Don Charles Dehault Delassus the 28th of October, A. D. 1802."

The record of the proceedings of said board, under date of Monday, December 9th, 1811, is as follows:

Proceedings board of commissioners, Dec. 9, 1811.

"Board met; present, John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners. Gregoire Sarpy, claiming 6,000 arpens of

land, situate river Des Peres, district of Saint Louis, produces record of a concession from Charles D. Delassus, L. G., dated 28th October, 1802, records of a plat of survey of 4,002 arpens, dated 18th March, 1803, record of plat of survey of 1,400 arpens, dated 2d January, and certified 15th April, 1804. It is the opinion of the board that this claim ought not to be confirmed. Board adjourned until to-morrow, nine o'clock a. m.

(Signed) "JOHN B. C. LUCAS.
"CLEMENT B. PENROSE.
"FREDERICK BATES."

The following is an abstract of records in the office of the U. S. recorder of land-titles in the State of Missouri, as certified by the recorder:

Abstract of records in office U. S. recorder of land-titles.

"Opinions of the recorder of land-titles for the Missouri Territory, as to claims entered under the act of June 13th, 1812, and proven before 1st January, 1814, as provided by the act of the 3d March, 1813, comprehending also the claims in the late district of Arkansas, which by act of 2d August, 1812, were to be permitted to be entered until 1st January, 1814, and proven until 1st July, 1814, together with the extensions of quantity provided by the 4th section of the act of 3d March, 1813, and confirmations under the act of 12th April, 1814:

18 Warrant or order of survey.	Survey.	Notice to the recorder, by whom.	Quantity claimed.
Con'fr C. D. Delassus, Lt. Govern. 28th Oct., 1802.	18 March, 1803, and 2 January, 1804.	Gregoire Sarpy.	6,000 arpens.
Where Situate.	*Pos'n Inhab'n. & Cult'n.*		*Opinions of the recorder.*
River Des Peres, D't. St. Louis.			Confirmed for the quantity. Contained in a league square. O. S. C., p. 264. rep't 499.

"RECORDER'S OFFICE, *St. Louis*, 8 *April*, 1861.

"The above is correctly transcribed from page 1, of book No. 1, and page 63 of book No. 3, being two of the five small books in this office, with the following endorsement on the first and also on the fifth book, believed to be in the handwriting of Frederick Bates, to wit: These five small books are originals in the proper handwriting of the undersigned, being his decisions on land-claims since the adjournment of the late board. They were arranged and fairly transcribed for report to the Commissioner of the General Land-Office, but not yet recorded in the books, because they have no authority till sanctioned by Government.

"St. Louis, November 1st, 1815.

"FREDERICK BATES,
"*Recorder of Land-Titles.*

The 3d vol. of American State Papers shows the lists of claims reported by said Bates, November 1st, 1815, and Feb. 2d, 1816, referred to in the act of Congress, approved April 29, 1816, (3 U. S. St. at Large, 328,) being four tabular lists, as follows:

19 *Claims reported by Recorder Bates Nov.* 1, 1815, *and Feb.* 2, 1816.

1. "Confirmation of village claims under act of Congress of 13th June, 1812."

2. "Grants of the late board extended by virtue of the 4th section of the act of Congress of the 3d March, 1813."

3. "Confirmations of concessions, order, or warrants of survey, principally under act of Congress of 12th April, 1814."

4. "Grants of claims founded on settlements under the several acts of Congress, commencing with that of 13th June, 1812, and ending with that of 12 April, 1814."

The claim in controversy is placed in the list marked No. 3, as follows: "Concessions," Ch. D. Delassus, lt. gov.; "survey," 18th March, 1803, and 2d January, 1804; "claimant," Gregoire Sarpy; "land claimed," 6,000 arpens; "situation," river Des Peres. Opinion of the recorder, "confirmed, not exceeding a league square."

Survey No. 1953, as included in the patent as hereinafter described.

20 *Patent certificate by Hunt, No. 1033, Sept. 13, 1825.*

No. 1033.] "OFFICE OF THE RECORDER OF LAND-TITLES,
"*Sept.* 13, 1825.

"It is hereby certified that, pursuant to acts of Congress respecting claims to land in the Territories of Orleans and Louisiana, and Territory of Missouri, the claim of Gregoire Sarpy for the quantity of 7,056 arpents has been duly confirmed, and that on the 6th and 7th days of May, 1818, the said tract was regularly surveyed, containing $6{,}002\frac{50}{100}$ acres, as per plat herewith authenticated by the United States surveyor's office, and designated on the connected plat as No. 1953. Now, therefore, be it known that the said Gregoire Sarpy is entitled to receive a patent for the tract above mentioned.

(Signed) "THEODORE HUNT."

Thereupon the following official correspondence ensued:

Letter of Jno. Graham, Gen'l Land-Office, Dec. 14, 1825, to Wm. McKee, surveyor, St. Louis.

GENERAL LAND-OFFICE, *Dec.* 14, 1825.

SIR: A certificate of the recorder of land-titles, in favor of Gregoire Sarpy, with a plat of a survey of 7,056 arpents, made by Langham in 1818, has been presented to this office for a patent. On an examination of the reports, it appears that Sarpy claimed before the board of commissioners 6,000 arpents, situate on the river Des Peres, and produced a record of a concession from Lieut. Governor Delassus, dated 28th October, 1802, a record of a plat of survey of 4,002 arpents, dated 13th March, 1803, and record of a plat of the survey of 1,400 arpens,
21 dated 2d January, and certified 15th April, 1804, and that, on the 9th of December, 1811, the commissioners rejected the claim.

"Under the provisions of the act of 12th April, 1814, the recorder confirmed the claim 'not exceeding a league square.'"

I will thank you to examine the surveys produced to the board of commissioners, and inform me of the quantity of land actually contained within the surveys, as the quantity confirmed to the claimant by the act of 1814 will be limited to that contained in the surveys, provided it does not exceed a league square. I will also thank you to inform me if the lines of the survey made by Langham correspond with those of the surveys made in 1803 and 1804.

With great respect, your obedient servant,

JOHN GRAHAM.

"WM. MCKEE, Esq.,
Surveyor, St. Louis, Mo."

On the 19th December, 1826, Commissioner G. L. Office made a report to the Hon. Richard Rush, in which, amongst other things, he treats this claim:

Report Commissioner G. L. Office to Hon. R. Rush, Dec. 19, 1826.

"3d class of cases in which patents have been suspended for claims supposed to have been confirmed under the act passed on the 12th April, 1814."

"2d. Gregoire Sarpy, for 7,046 arpents. In this case Gregoire Sarpy obtained a concession for 6,000 arpents from the Spanish government, on which a survey was made by the authority of that government for 4,002 arpents, 8 miles from St. Louis, and another survey, con-
22 taining 1,400 arpens, was made under the same authority, about 20 miles from St. Louis. Sarpy entered his claim for 6,000 arpens, and filed the two surveys with the commissioners, who rejected the claim. These surveys, however, were confirmed by the act of 1814, and reported by the recorder as so confirmed. The resurvey on which the patent is claimed is for 7,056 arpents. It includes one of the original surveys, which appears to have been accurately made, and contains, within the courses and distances, the quantity called for, 4,002 arpents. The patent on the resurvey is withheld because it varies from the original survey, and includes a large body of land confessedly not included in either of the surveys, and, therefore, not confirmed to the claimant. The papers in this case and a letter from Col. McKee, are submitted, that Congress may take such measures as to them may seem expedient and proper."

Act of Congress, Aug. 11, 1842, (6 *U. S. St.*, 85.)

An act for the relief of Gregoire Sarpy, or his legal representatives.

Be it enacted, etc., That it shall be the duty of the proper officers of the United States to issue a patent to Gregoire Sarpy, or his legal representatives, for seven thousand and fifty-six arpents, containing six thousand and two acres and fifty-hundredths of an acre of land, pursuant to patent-certificate number one thousand and thirty-three, dated September thirteenth, one thousand eight hundred and twenty-five, and to the survey thereof, numbered one thousand nine hundred and fifty-three, certified by the surveyor of Illinois, Missouri, and Ar-
23 kansas, at Saint Louis, on the thirteenth day of September, one thousand eight hundred and twenty-five.

Approved August 11, 1842.

Certificate of Recorder Fish.

EXHIBIT D.

Confirmation of land-claims in Missouri by the act of 29th April, 1816, according to concessions and Recorder Bates' report of 2d February, 1816.

Number of claim.	Names of the claimants and confirmees.	Quantity claimed.	Nature of claim.	Number of—		
				Survey.	Township.	Range.
119	Gregoire Sarpy.....	6,000 arpens.	Concession 28th October, 1802.	1,953	44 & 45 north.	6 east.

Quantity confirmed and contained in the survey.	Date of—		References to books in the recorder's office.	Remarks.
	Execution of the survey.	Return to the recorder.		
7,056 arpens.	May, 1818....	13 September, 1825.	6, page 264, Bates' Decisions, p. 63.	See act 11 August, 1842. Also No. 20 of Exhibit L.

OFFICE OF THE U. S. RECORDER LAND-TITLES,
Saint Louis, September 24, 1873.

This is to certify that the above is truly and correctly copied or extracted from a book marked "Exhibit of private land-claims in Missouri;" which book is up to this day preserved on file in this office.

STILLMAN O. FISH, *Recorder.*

Certificate of recorder. S. O. Fish.

24 *Patent, dated February 1st, 1869.*

Patent dated Febr'y 1, 1869.

The United States of America to all whom these presents shall come, greeting: Whereas, by the act of Congress approved 11th Aug., 1842, entitled "An act for the relief of Gregoire Sarpy, or his legal representatives," it is directed that patent shall be issued to Gregoire Sarpy, or his legal representatives, for seven thousand and fifty-six arpens, containing six thousand and two acres and fifty-hundredths of an acre of land, pursuant to patent certificate number one thousand and thirty-three, dated September thirteenth, one thousand eight hundred and twenty-five, and to the survey thereof, numbered one thousand nine hundred and fifty-three, certified by the surveyor of Illinois, Missouri, and Arkansas, at Saint Louis, on the thirteenth of September, one thousand eight hundred and twenty-five." Which survey is in the words and figures following, to wit:

25 (Here follows map, marked page 24.)

"*Survey No.* 1,953.

"Survey No. 1,953.

"Surveyed for Gregoire Sarpy, who claims in his own right 7,056 arpens, equal 6,002$\frac{50}{100}$ acres of land, situate in townships 44 & 45 north, range No. 6 east of 5th princ'l med'n, on the river Des Peres. Begin at Eugene Alvarez upper corner, on the river Des Peres, a stone from which a blue ash 9 ins. in dia. bears N. 14 E. 34 links, & a sycamore 18 ins. di. N. 65 E. 31 l.; thence S. 36 W. 52 ch's to a stone; thence N. 83½ W. 147 chains 65 links to a stone; thence S. 6½ W. 33 ch's 50 l. to a post corner, from which a b. oak 10 ins. in di. bears S. 25 E. 30 l., and a w. o. 6 ins. di. N. 11 W. 58 l.; thence N. 83½ W. 54 ch. 60 l. to a hickory corner; thence N. 6½ E. 30 ch. 85 links, a b. o. 12 ins. di. 127 ch. 50 l. to a post corner, from which a b. o. 10 ins. di. bears N. 89 W. 37 l., and a w. o. 8 ins. di. N. 80 W. 35 l.; thence N. 83½ W. 161 ch. 50 l. to a post corner, from it a b. o. 10 ins. di. bears N. 87 E. 417 l. and a w. o. 10 ins. di. S. 86 W. 168 l.; thence N. 6½ E. 55 ch. to the line between townships 44 & 45 N., R. 6 E. 10 ch's east of the corner of secs. 31 & 32 in T. 45 N., at

161 ch's 50 l., set post corner, from which a w. o. 12 ins. di. bears S. 16 E. 234 l., and a w. o. 12 ins. di. S. 15 W. 127 l.; thence S. 83½ E. 161 ch's 50 to corner post on the bank of the river Des Peres, from which an elm 10 ins. di. S. 52 E. 39 l., and an elm 8 ins. di. bears S. 43 W. 77 l., and a b. walnut 18 ins. di. N. 82, W. 16 l.; thence down said river (with the meanders) to Charles Gratiot's line, (of which the general course is S. 73¼ E., and the direct distance is 40 ch's 50 links;) thence with
26 Gratiot's line S. 8° 40′ W. 32 ch's 60 l. to his corner post, from which a b. jack 6 ins. di. bears S. 7 E. 73 l., and a b. j. 6 ins. di. S. 32 E. 95 l.; thence S. 83 E. 38 ch's 50 l. to the river Des Peres; thence down the said river with the meanders thereof on the left bank, as follows: S. 10 W. 3 ch's, S. 5 W. 3 ch's, S. 36 W. 5 ch's, S. 60 E. 3 ch's, S. 73 E. 6 ch's, S. 5 E. 6 ch's, S. 31 E. 5 ch's, S. 42 E. 6 ch's, S. 32 E. 7 ch's, N. 78 E. 4 ch's, S. 65 E. 3 ch's, S. 25 E. 6 ch's, S. 3 W. 10 ch's, S. 9 E. 5 ch's, S. 11 W. 5 ch's, S. 40 E. 1 ch., S. 71 E. 3 ch's, 50 l.; N. 72 E. 4 ch's, S. 55 E. 1 ch., S. 32 E. 6 ch's, S. 11 E. 7 ch's, S. 18 W. 3 ch's, S. 64 W. 3 ch's 50 links, S. 84 W. 9 ch's, S. 53 E. 4 ch's, S. 82 E. 2 ch's, N. 77 E. 9 ch's, S. 20 E. 5 ch's, south 14 ch's, S. 78 E. 1 ch. 50 l., N. 68 E. 1 ch., N. 50 E. 4 ch's, S. 83 E. 3 ch's, S. 20 E. 8 ch's, S. 63 E. 2 ch's, S. 86 E. 6 ch's 50 l., S. 23 E. 9 ch's, S. 7 W. 4 ch's, S. 52 W. 3 ch's, S. 67 W. 5 ch's, S. 33 W. 2 ch's, S. 14 E. 1 ch. 50 l., S. 48 E. 3 ch's, S. 61 E. 9 ch's, S. 40 E. 13 ch's, S. 28 E. 10 ch's, S. 52 E. 10 ch's, east 3 ch's, N. 38 E. 2 ch's, N. 10 W. 6 ch's, N. 16 E. 3 ch's, N. 77 E. 3 ch's 40 l. to Spring Branch, S. 57 E. 3 ch's 20 l., S. 16 E. 9 ch's 50 l., S. 47 E. 2 ch's, S. 60 E. 1 ch. 50 l., S. 28 E. 2 ch's 50 l., S. 48 W. 3 ch's 50 l., S. 70 W. 3 ch's 50 l., S. 45 W. 2 ch's, S. 36 E. 2 ch's 50 l., S. 61 E. 2 ch's, S. 46 E. 3 ch's, S. 58 E. 5 ch's, S. 70 E. 4 ch's 50 l., S. 10 W. 7 ch's 50 l. *to* the mill, S. 73 E. 24 ch's to the beginning.

"May 6th & 7th, 1818.

"A. L. LANGHAM,
"*Dep. Surv'r.*"

SURVEYOR'S OFFICE, ST. LOUIS, MISSOURI,
13*th September*, 1825.

Surveyor's certificate.

I certify that the foregoing survey is a true copy of the original on file in this office, and that it is recorded in book B, pages 452 & 453.

W. MCREE,
Surv'r of Ills., Mo. & Ark.

27 Now, know ye that there is, therefore, granted unto the said Gregoire Sarpy, or his legal representatives, the tract of land embraced and described in the foregoing survey, to have and to hold the said tract of land, with the appurtenances, unto the said Gregoire Sarpy, or his legal representatives, and to his heirs and assigns forever.

In testimony whereof I, Andrew Johnson, President of the United States, have caused these letters to be made patent and the seal of the General Land-Office to be hereunto affixed.

Given under my hand at the city of Washington, the first day of February, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-third.

By the President:

ANDREW JOHNSON,
By FRANK COWAN,
Secretary.

J. N. GRANGER,
Recorder of the General Land-Office.

Deed of Gregoire Sarpy by sheriff to Chouteau, June, 1808, with acknowledgments.

Deed of Sarpy by sheriff to Chouteau, June, 1808.

To all to whom these presents shall come:

I, Jeremiah Connor, sheriff of the district of St. Louis, send greeting: Whereas writs of fieri facias were, on the thirteenth day of November and the seventeenth December, in the year of our Lord one thousand eight hundred and seven, the one in favor of Benoit Bezayou & wife, and the other in favor of Alexander McNair & others, against Gregoire Sarpy, issued out of the office of the clerk of the general court of the Territory of Louisiana, and two other writs of fieri facias were also, on the twenty-second day of November, in the year last aforesaid, the
28 one in favor of Eulalie Dophimie, heir do. of f. Barriere, deceased, and the other in favor of Jean Baptiste Lemoine, issued out of the office of the prothonotary of the court of common pleas of the district of St. Louis, against the said Gregorie Sarpy, copies of which said executions are hereunto annexed and make part of this deed; and whereas by virtue thereof, and to satisfy the said executions, I did levy upon and attach all the right, title, and interest of the said Gregoire Sarpy to a certain tract of land situate, lying, and being on the river Des Peres, district of St. Louis, the same being part of the quantity of six thousand arpens granted to said Sarpy as per concession from Charles D. Delassus, dated the 28th October, in the year of our Lord one thousand eight hundred and two, containing the said tract, four thousand two arpens, be the same more or less, and the same premises being by me, the said sheriff, advertised according to law, and afterwards, to wit, on the ninth day of March past, at the court-house door, and whilst the court of common pleas and quarter session of the peace for the district aforesaid where in session, exposed to sale, cried, and sold to Pierre Chouteau, of the town and district aforesaid, for the sum of fifty dollars current money of the United States: Now, therefore, know ye that, by virtue of the powers vested in me by law, for and in consideration of the sum of fifty dollars, as aforesaid, to me *to me* the said sheriff well and truly paid and fully satisfied by the said Pierre Chouteau, I do hereby grant, assign, transfer, and make over to him, the said Pierre Chouteau, his heirs and assigns, all the right, title, interest, and property of him, the said Gregoire Sarpy, in and to the aforementioned and described premises and appurtenances, to have and to hold the same to him, the said Pierre Chouteau, his heirs and assigns.

In testimony whereof I, the said sheriff, have hereunto set my hand and affixed my seal the twenty-ninth day of June, in the year of
29 our Lord one thousand eight hundred and eight.

JOHN CONNOR, [SEAL.]
Sheriff, D. St. L.

Signed, sealed, and delivered in the presence of—("fully" interlined; the words "being a part of the quantity of six thousand arpens" interlined.)

THOS. J. RIDDICK.
CABANNE.

On the 29th day of June, 1808, before me, the subscriber, a justice of the peace for the township of St. Louis, personally came Jeremiah Connor, sheriff of the district of St. Louis, and acknowledged the foregoing

deed or instrument of *of* writing to be his act and deed according to the true co'tent & meaning thereof, and the land and premises therein contained to be the right and title of the within-named Pierre Chouteau, his heirs and assigns.

THOS. F. RIDDICK.

TERRITORY OF LOUISIANA:

The United States of America to the sheriff of the district of St. Louis, greeting, ss:

Whereas Alexander McNair and others, at a general court of our Territory aforesaid, before our judges, hath recovered against Gregoire Sarpy the sum of fourteen hundred dollars and sixteen dollars and two-thirds cents for their damages, and also the sum of two hundred and ninety-four dollars and ten cents, which, to the said Alexander McNair and others, were adjudged for their damages, as well by reason of detaining the said damages as for their costs in that suit expended, as appe'r' to us of record, these are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Gregoire Sarpy, you cause to be made the aforesaid seventeen hundred and ten dollars thirteen and two-third cents, and that you have the same before the judges of our said court on the first Monday of May next, to render the said Alexander McNair and others aforesaid; and for want of sufficient goods and chattels, lands and tenements whereon to levy and
30 make the same, we command you that you take the said Gregoire Sarpy, if he be found in your bailiwick, and him safely keep, so that you have his body before the same judges on the said first Monday of May, to satisfy the said Alexander McNair and others of the said seventeen hundred and ten dollars and thirteen and two-thirds cents, and that you certify to our said judges how you execute this writ, and have you then there this writ.

Witness the honorable John B. C. Lucas, esquire, presiding judge of the said court, at St. Louis, this thirteenth day of November, in the year of our Lord one thousand eight hundred and seven, and of our Independence the thirty-second.

(Copy.) J. V. GARNIER, *Clerk.*

TERRITORY OF LOUISIANA, *ss:*

The United States of America to the sheriff of the district of St. Louis, greeting:

Whereas Benoit Bezayou and wife, at a general court of our Territory aforesaid, before the judges, hath recovered against Gregoire Sarpy the sum of three hundred and eighty-five dollars for their damages, and also the sum of forty-two dollars and seventy-two cents, which to the said Benoit Bezayou & wife were adjudged for their damages, as well by reason of detaining the said three hundred and eighty-five dollars as for their costs in that suit expended, as appears to us of record:

These are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Gregoire Sarpy, you cause to be made the aforesaid four hundred and twenty-seven dollars and seventy-two cents, and that you have the same before the judges of our said court on the first Monday of May next, to render the said Benoit and wife aforesaid; and for want of sufficient goods and chattels, lands and tenements, whereon to levy and make the same, we command you that you take the said Gregoire Sarpy, if he may be found in your bailiwick, and
31 himself keep, so that you have his body before the same judges

on the said first Monday of May next, to satisfy *to satisfy* the said Benoit Bezayou and wife of the aforesaid four hundred and twenty-seven dollars and seventy-two cents, and that you certify to our said judges how you execute this writ; and have you then and there this writ.

Witness the honorable John B. C. Lucas, esquire, presiding of our said court, at Saint Louis, this seventeenth day of December, in the year of our Lord one thousand eight hundred and seven, and of our Independence the thirty-second.

(Copy.) J. V. GARNIER, *Clerk.*

TERRITORY OF LOUISIANA,
District of St. Louis, sct:

The United States of America to the sheriff of the district of St. Louis, greeting:

Whereas Eulalie Dofine, heir, etc., of S. Barriere, dec'd. at our court of common pleas, before our judges, hath recovered against Gregoire Sarpy the sum of one hundred and thirty dollars twenty-six cents, for debt, and also the sum of eight dollars and seventy-nine cents, which to the said Eulalie Dofine were adjudged for damages as well by reason of detaining the said debt as for costs in that suit expended, as appears to us of record: These are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Gregoire Sarpy, you cause to be made the aforesaid and costs, and that you have the same before the judges of our said court on the seventh day of March next, to render to said Eulalie Dofine the debt aforesaid, and for want of sufficient goods, chattels, lands, and tenements whereon to levy and make the same, we command you to take the said Gregoire Sarpy, if he be found within your bailiwick, and him safely keep so that you have his body before the same judges on the said seventh day of March, to satisfy the said debt & costs, and that you certify to our said judges
32 how you execute this writ, and have you then there this writ.

Witness the honorable Silas Bent, presiding judge of our said court, at the town of St. Louis, the twenty-second day of November, in the year of our Lord one thousand eight hundred and seven, and of the Independence of the United States the thirty-second.

(Cop.) THOS. F. RIDDICK,
Clerk of St. L. D., C. P.

TERRITORY OF LOUISIANA,
District of St. Louis, sct:

The United States of America to the sheriff of St. Louis district, greeting:

Whereas John Babtiste Lemoine, at our court of common pleas, before our judges, hath recovered against Gregoire Sarpy the sum of three hundred and forty-five dollars and forty-five cents for debt, and also the sum of eight dollars thirty-three and a half cents, which to the said John Baptiste Lemoine were adjudged for his damages, as well by reason of detaining the said debt as for his costs in that suit expended, as appears to us of record:

These are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Gregoire Sarpy, you cause to be made the aforesaid debt and costs, and that you have the same before the judges of our said court on the seventh day of March next, to render to the said John Baptiste Lemoine the debt aforesaid; and for want of sufficient goods and chattels, lands and tenements, whereon to levy and make the same, we command you to take the said Gregoire Sarpy, if he

be found within your bailiwick, and him safely keep, so that you have his body before the same judges on the said seventh day of March, to satisfy the said John Babtiste Lemoine of the aforesaid debt and costs, and that you certify to our said judges how you execute this writ, and have you then there this writ.

Witness the honorable Silas Bent, presiding judge of our said court, at the town of Saint Louis, the twenty-second day of November, in the year of our Lord one thousand eight hundred and seven, and of
33 the Independence of the United States the thirty-second.

(Copy.) THOS. F. RIDDICK,
Clerk of St. L. D., C. P.

Recorded this the 28th day of August, 1813.
M. P. LE DUE, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned recorder for the county aforesaid, certify the foregoing to be a true copy of an instrument in writing, executed by Jeremiah Connor, sheriff, together with the acknowledgment thereof, as the same remain on record in my office, in book D, page 257.

Witness my hand and official seal this 26th day of August, 1826.
[SEAL.] W. C. KENNETT, *Recorder.*

Deed of Chouteau to widow Labadie.

[Translation.]

Deed of Chouteau to widow Labadie, June 30, 1808.

Know all men who shall see these presents, that we, Pierre Chouteau and Brigitte, my wife, of the town and district of St. Louis, and Territory of Louisiana, acknowledge to have this day sold, ceded, relinquished, & transferred, as by these presents we do sell, cede, relinquish, & transfer, just as I have acquired it from Jeremiah Connor, sheriff of the district of St. Louis, at the sale of the property of Gregoire Sarpy, by virtue of executions issued to him, as it appears by the sales of said sheriff, on the date of the twenty-ninth and thirtieth instant, to Pelagie Chouteau, widow Labadie, of the town, district, and Territory aforesaid, to wit, a land situated on the river Des Peres, in the district of Saint Louis, containing the quantity of sixteen hundred and thirty-two arpent' and forty-eight perches, more or less, upon which land there are a flour-mill, with a brick building, a dwelling-house, a barn, &c.; also, another land of four thousand two arpens, also situated on the river Des Peres, and another land of fourteen hundred arpens, situated
34 on the river Marrameck, in the district aforesaid, the two last lands forming a part of a concession of six thousand arpens granted to said Gregoire Sarpy by Dn. Charles Dehault Delassus, on the twenty-eighth of October, eighteen hundred and two; and, lastly, one arpent in front by forty in depth, situated on "Marais Crothe," district of St. Charles, & Territory aforesaid, for the price & sum of one dollar, current money of this county, which we acknowledge to have received of Pelagie Chouteau, widow Labadie, and from which, by these presents, we give her a full release, desiring her to take possession of the said land, and to hold the same from this day for her, her heirs or legal representatives, & as of property to them belonging, promising & ca., obligating & ca., renouncing, & ca.

In testimony whereof we have signed and sealed these presents before witnesses, in the town of St. Louis, this thirtieth day of June, in the year of our Lord eighteen hundred and eight.

PIERRE CHOUTEAU. [SEAL.]
SAUCIER CHOUTEAU. [SEAL.]

CHARLES SANGUINET.
CABANNÉ.

Before the undersigned, one of the judges of the court of common pleas for the district of St. Louis, and Territory of Louisiana, appeared Pierre Chouteau, who acknowledged that the foregoing deed was his own, that it contained his wishes, and that as such it might be recorded. And having separately examined Brigitte Saucier, his wife, and asked her if she had not *be* constrained to sign the foregoing deed, and she having answered that she had signed it voluntarily and without compulsion, we have signed and sealed these presents on the 30th of June, 1808.

BERN'D PRATTE. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss :

I, the undersigned, recorder of deeds for said county, certify the
35 foregoing to be a true and correct copy of an instrument of writing from Pierre Chouteau and Brigitte Saucier, his wife, to Pelagie Chouteau, widow Labadie, of the date of filing and recording thereof, and of the translation thereof, as the same remains of record in my office, in book D, page 267.

Witness my hand and official seal this twenty-sixth day of August, A. D. 1873.

[SEAL.] W. C. KENNETT, *Recorder.*

Deed of Pratte and others (heirs) to Wilson P. Hunt.

Deed of Pratt and others to W. P. Hunt, Aug. 29, 1817.

Know all men by these presents, that we, Bernard Pratte and Emilie Labadie Pratte, his wife, Auguste P. Chouteau and Sophie Labbadie Chouteau his wife, John Little and Marie Antoinette Little, his wife, Silvestre Labadie and Victoire Grettiot Labadie, his wife, and Gregoire Sarpy and Pelagie Labadie Sarpy, his wife, all of the county of St. Louis, in the Territory of Missouri, in consideration of the sum of twenty thousand dollars, to us in hand paid by Wilson P. Hunt, the receipt whereof we do hereby acknowledge, have this day given, granted, bargained, and sold, aliened, enfeoffed, released, and confirmed, and by these presents do give, grant, bargain, and sell, alien, enfeoff, release, and confirm, to the said Wilson P. Hunt, his heirs and assigns forever, two tracts of land, lying in the county of St. Louis, in the Territory of Missouri aforesaid, on the river Des Peres, heretofore conceded under the authority of the Spanish government to the said Gregoire Sarpy. The one granted to the said Gregoire Sarpy, under the authority aforesaid, by Carlos Dehault Delassus, lieutenant-governor for the time being of the district of St. Louis, in the province of upper Louisiana, by a concession bearing date
36 the twentieth day of October, one thousand eight hundred and two, & in the figurative plan and certificate of survey made thereof by order of the lieutenant-governor aforesaid, described as follows, to wit: beginning at a stone on the south bank of said river Des Peres, and

running thence south one hundred and forty perches; thence west five hundred and fifteen perches; thence south one hundred and twenty perches; thence west one hundred and sixty-five perches; thence north eight hundred and ninety perches to white hickory or walnut on the said river; and thence down the said river to the beginning; and supposed to contain four thousand and two arpens, be the same more or less. The other tract of land granted originally under the authority aforesaid, and by the lieutenant-governor for the time being, to Antoine Reilhe and Mad'e Anne Veuve Camp, by a concession, supposed to contain two thousand nine hundred and five arpents, thirty-six perches, forty feet and six inches, of which the part of the said Antoine Rheilhe was, by regular conveyance, derived from him by the said Gregoire Sarpy, and which was afterwards divided by the consent of the said Mad'e Ve. Camp, and under the authority and direction of the said Carlos Dehault Delassus, between the said Gregoire Sarpy and the said Mad'e Anne Veuve Campe, and the portion of which allotted to the said Gregoire Sarpy is in the figurative plan and certificate of survey described as follows, to wit: Beginning at a point on the north bank of the said river, and running thence north twenty-three degrees east, thirty arpens; thence north nine and a half degrees east, thirty-four arpens; thence south seventy-three degrees west, five arpens and three perches; thence west sixty-nine arpents and two perches, and south forty-nine arpents and six perches to a point on the river, pursuing the line dividing the land so then allotted to the said Sarpy from the land so then allotted to the said Anne Veuve Campe, and thence down
37 the said river to the beginning, and supposed to contain one thousand six hundred and thirty-two arpens, forty-eight perches, one hundred and five feet & nine inches, be the same more or less, and comprehending a stone mill-house, dwelling-house, & back and other improvements situated thereon, which two said tracts of land were subsequently confirmed to the said Gregoire Sarpy, under the authority of the Government of the United States of America, by a board of commissioners, appointed with authority to confirm the same, which confirmation was finally ratified by an act of the Congress and President of the United States in that case made and provided, being all the lands on the said river Des Peres at any time granted to the said Gregoire Sarpy under the authority of the Spanish government, or claimed by him under the said Antoine Reilhe, or confirmed to him by the Government of the United States, and being also two of the tracts of land heretofore sold by Jeremiah Connor, sheriff of the county of St. Louis, to satisfy certain debts of the said Gregoire Sarpy (in virtue of executions to him for that purpose directed) to Pierre Chouteau, and by the said Chouteau and Saucier Chouteau, his wife, by deed bearing date the thirtieth day of June, one thousand eight hundred and eight, conveyed to Madame Pelagie Chouteau, Ve. Labadie, and which descended from her (she being now dead) to the said Bernard Pratte and Emilie Labbadie Pratte, Auguste P. Chouteau, and Sophie Labbadie; John Little and Marie Antoinette Little, Silvestre Labadie, and Victoire Gratiot Labadie, and Gregoire Sarpy, and Pelagie Labadie Sarpy, and we do hereby give and grant, bargain & sell, alien, enfeoff, release, and confirm to the said Wilson P. Hunt, his heirs and assigns forever, all the land which we may be entitled to in virtue of the said concessions, or of the confirmation whereby the same was confirmed to the said Gregoire Sarpy by the board of commissioners of the United States of
38 America, acting under the authority of the said United States, and the act of the President and Congress of the said United States,

to have and to hold the said two tracts of land, with all ways, waters, woods, houses, out-houses, mills, easements, privileges, and advantages thereon, or arising out of or accruing from the said concession or confirmation, to him, the said Wilson P. Hunt, his heirs and assigns forever. And we do hereby warrant, and for ourselves, our heirs, executors, administrators, do covenant to defend to the said Wilson P. Hunt, his heirs and assigns forever, the rights, titles, possession, and enjoyment into and of the said lands and all privileges and advantages thereunto appurtenant, or arising out of, or accruing from, the same, as above mentioned, against the right, title, and claim of all and every persons or person whatsoever.

In witness of all which we have hereunto set our hands and seals this twenty-ninth day of August, one thousand eight hundred and seventeen.

BERNARD PRATTE.	[SEAL.]
E. T. PRATTE *nee* LABBADIE.	[SEAL.]
SILVESTRE LABBADIE.	[SEAL.]
VICTOIRE LABBADIE *nee* GRATIOT.	[SEAL.]
GREGOIRE SARPY.	[SEAL.]
LABBADIE SARPY.	[SEAL.]
LABBADIE CHOUTEAU.	[SEAL.]
A. P. CHOUTEAU.	[SEAL.]
JOHN LITTLE.	[SEAL.]
MARY LABBADIE LITTLE.	[SEAL.]

Signed, sealed, and delivered in presence of—

F. M. GUYOT.

TERRITORY OF MISSOURI,
County of St. Louis, Township of St. Louis, ss:

Before me, the undersigned, one of the justices of the peace in and for the county and township aforesaid, personally appeared the within-named Bernard Pratte & C. S. Pratte, born Labbadie, his wife, Sylvester Labbadie and Victoire Labbadie, born Gratiot, his wife, Gregoire Sarpy and Labbadie Sarpy, his wife, Labbadie Chouteau, wife of August P. Chouteau, within named, who is absent at present, also John Little and Mari Labbadie Little, his wife, who all acknowledge the
39 within instrument of writing to be their and each of their act and deed, hand and seals, for the purposes therein contained. The said E. S. Pratte, Victoire Labbadie Sarpy, Labbadie Chouteau, and Mari Labbadie Little, being first separately and apart examined from their respective husbands, and by me made acquainted with the contents of the said instrument of writing, declare positively that they executed the same freely, voluntarily, and without fear, restraint, compulsion, or undue influence of their husbands.

Given under my hand and seal this thirtieth day of August, in the year one thousand eight hundred & seventeen.

F. M. GUYOT, [SEAL.]
A Justice of the Peace.

Recorded this first day of September, 1817.

AN. S. McGIRK, *D. E. F. Recorder*,
For M. P. LEDUE, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of a deed from Bernd. Pratte et al. to W. P. Hunt,

the certificate of acknowledgement, and also the date of recording as fully as the same remains for record in my office, in book F, page 381.

Witness my hand and official seal this 6th day of April, 1861.

[SEAL.] A. C. BEMONDY, *Recorder*,
Pr. J. CONRAD, *Dy.*

TERRITORY OF MISSOURI,
County of St. Louis, Township of St. Louis, sct.:

Before me, the undersigned, one of the justices of the peace in and for the county and township aforesaid, personally appeared the within-named August P. Chouteau, who acknowledged the foregoing to be his act and deed, hand and seal, for the purpose therein mentioned, and that he executed the same voluntarily and freely, and wishes it to be recorded as such.

Given under my hand and seal this eighth day of September, in the year of our Lord one thousand eight hundred and seventeen.

F. M. GUYOT, *Justice of the Peace.*

40 Recorded this tenth day of September, 1817.

A. S. McGIRK, *D. Clk.*,
For M. P. LEDUE, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of a certificate of acknowledgment, and also the date of recording, as the same remains of record in my office, in book F, page 389.

Witness my hand and official seal this 6th day of April, 1861.

[SEAL.] A. C. BEMONDY, *Recorder*,
Pr. J. CONRAD, *Dy.*

Deed of Hunt, by administratrix, to Chouteau, June 5, 1845.

Deed of Hunt, by administratrix, to Chouteau, June 5, 1845.

This deed, made and entered into this 5th day of June, in the year one thousand eight hundred and tw'n'y-five, by and between Anne L. Hunt, of the county of Saint Louis, State of Missouri, administratrix, with the will annexed of Wilson P. Hunt, deceased, of the one part, and Pierre Chouteau, junior, of the county and State aforesaid, of the other part, witnesseth: That whereas the probate court of the county of Saint Louis did, at the September term of said court, in the year 1843, make an order of sale of the real estate of said deceased, which said order of sale not having been fully complied with, was at divers other times, and finally on the 5th day of March, A. D. 1845, at the March term of the aforesaid probate court, renewed the said original and renewed orders of sale, including the three following described tracts of land, and the two city lots or pieces of ground, as hereinafter set forth, to wit:

First. The west half of the southeast quarter of section twenty-eight, (28,) township twenty-four north, range four east, in the county of St. Louis, and containing eighty acres.

Second. The eastern half, being one hundred eighty-six & $\frac{25}{100}$ acres of the following described tracts of land, to wit: "Three hundred acres of land, being part of a large tract originally
41 granted by the Spanish government to Antoine Reilhe and Madame Anne Veuve Camp by a concession, the portion whereof which

is hereby conveyed forms a part of the tract formerly allotted to Gregoire Sarpy, on a division of the original tract between him (claiming under said Reilhe) and said Ann Camp, beginning at a stone corner at the eastern edge of a pond, which is also the southeast corner of land confirmed in the name of Charles Gratiot; thence north 83° 10′ west with said Gratiot's southern line, 86 chains 70 links, to a stone corner on said line; thence south 7° 50′ west with the original division-line as run and marked between the said Sarpy and the said Ann Camp, 26 chains 65 links to a stone corner on said line; thence south 83° 50′ east 104 chains 71 links to a stone corner on the original eastern boundary-line of the survey, in the name of the said Reilhe and said Ann Camp; thence north 17° east with the old eastern boundary-line 40 chains 46 links to a stone corner; thence south 69° west with the original northern boundary-line of the aforesaid tract of land 28 chains 58 links, to the place of beginning. Fractional section six, (6,) township forty-four (44) north, range seven east of the fifth principal meridian, containing forty-six and fifty-five one-hundredths acres; fractional section thirty-one, (31,) in township forty-five (45) north, range seven (7) east of the aforesaid meridian, containing twenty-five and $\frac{95}{100}$ acres, as the same will more fully appear by a reference to the deed of John J. Astor to Wilson P. Hunt, dated August 12th, 1837, and recorded at Saint Louis, book C, No. 2., page 282, and following.

Third. A tract of land in the county of St. Louis, containing fourteen hundred eighty-four and $\frac{50}{100}$ acres, being part of a large tract originally conceded by the Spanish government to Gregoire Sarpy, and being a part of one of the tracts of land that was conveyed to Wilson P.
42 Hunt by Bernard Pratte and others (heirs of widow Labadie) by deed of August 29th, A. D. 1817, recorded at St. Louis, book F, page 381, and following, and is bounded as follows: Commencing at a stone the southeast corner of land of John B. Sarpy; thence south 7½° east 90 chains 10 links, to a stone near Cane Spring, being the southeast corner of the tract; thence north 82½ west 163 chains 55 links to a stone the southwest corner; thence north 7½° east 90 chains 76 links, to J. B. Sarpy's southwest corner; thence south 82½° east 163 chains 29 links to the place of beginning.

Fourth. Lot number seven, (7,) as the same is laid down on a plat of survey made by Joseph C. Brown, A. D. 1817, and recorded at St. Louis, in book K, page 95, one of the lots acquired by Wilson P. Hunt by deed of partition between Sylvester Labbadie and others, which said deed of partition is of record in the recorder's office, county of St. Louis, book K, pages 408, 409, 410, the said lot containing, on its northern end, forty feet front on Ashley street, by the same width in the rear, with a depth on each side of one hundred and twenty-five feet; is bounded on the north by Ashley street, south by an alley 20 feet wide, east by lot number 6 of said plat, and west by lot number 8.

Fifth. Lot number eighteen of the same plat of survey, acquired by Wilson P. Hunt, by the same deed of partition hereinbefore referred to, and described as follows, to wit: Beginning at the southwest corner of a twenty-feet alley and Louis or Madison street; thence southwardly with the west line of said Lewis or Madison street, thirty-seven feet six inches; thence westwardly with the line of Peter Lindel, one hundred thirty-nine feet nine inches; thence northwardly thirty-three feet seven inches, to the south line of the alley aforesaid; thence eastwardly with said line of alley one hundred and forty feet to the beginning corner; all of which said three tracts of land and two city lots or pieces of ground hereinbefore set forth, and designated as first, second, third, fourth, and fifth, were ordered

by the said probate court to be sold by the said administratrix
43 at public vendue or outcry at the eastern door of the court-house, in the county of St. Louis, on the first Monday of June, in the year 1845, between the hours of ten o'clock in the forenoon and five o'clock in the afternoon of that day, and during the sitting of the circuit or probate court of the county aforesaid, on the terms in said order set forth; and, on the complete payment of the purchase-money, a deed for the property sold to be executed by the said administratrix; and which order also provided that the said real estate should be first appraised, and notice of the time, terms, and place of sale be published for at least four weeks prior thereto, in some newspaper printed in the State, and also by at least ten advertisements put upon the most public places in the said county of St. Louis, for at least twenty days before such sale; and whereas the said administratrix did, in pursuance of and in obedience to said order, cause the said three tracts of land and two city lots or pieces of ground hereinbefore set forth, and the same referred to in the said order, to be appraised according to law, and did give notice of the time, terms, and place of sale of said real estate, as required by the said order of court, all of which will appear by reference to the records and proceedings of said probate court of the county of St. Louis, and did, in pursuance thereof, at the eastern door of the court-house, in the county of St. Louis, on the first Monday of June, in the year 1845, between the hours of ten o'clock in the forenoon and five o'clock in the afternoon of that day, and during the sitting of the probate court of said county, expose the real estate hereinbefore described to sale, on the terms in the said order of court mentioned, at public vendue or outcry, and at that sale Pierre Chouteau, junior, became the purchaser of each and every tract of land, lot, or piece of ground in said order mentioned
and herein described, and particularly designated by the words,
44 first, second, third, fourth, & fifth, he being the highest and best bidder, in each case, for the same, for the prices as detailed, to wit: the tracts of land designated herein as first, for the sum of twenty-five (25) dollars; the tract of land designated herein as second, for the sum of eight thousand (8,000) dollars; the tract of land designated herein as third, for the sum of eight thousand (8,000) dollars; the lot or piece of ground designated herein as fourth, for the sum of two thousand five hundred (2,500) dollars; the lot or piece of ground designated herein as fifth, for the sum of two thousand five hundred (2,500) dollars; amounting in the total to the sum of twenty-one thousand and twenty-five (21,025) dollars; all of which proceedings were duly reported to and approved by the said probate court, at the June term, 1845, thereof, and the said Pierre Chouteau, junior, having well and truly paid to the said administratrix the said sum of twenty-one thousand and twenty-five (21,025) dollars, in full for the purchase-money aforesaid, the receipt whereof is hereby acknowledged, the said Anna L. Hunt, administratrix as aforesaid, does, by virtue of the power and authority in her vested by the orders and proceedings of the said probate court, sell, assign, transfer, and convey to the said Pierre Chouteau, junior, and to his heirs and assigns, all the rights, title, interest, and estate of Wilson P. Hunt, deceased, at the time of his death, in and to the aforesaid three tracts of land and two lots or pieces of ground hereinbefore mentioned and described, and particularly designated by the words, first, second, third, fourth, & fifth, that she could sell or convey according to law and the order of said probate court; to have and to hold unto the said Pierre Chouteau, junior, and to his heirs and assigns forever, the said sold and conveyed three tracts of land and two lots or pieces of ground, together

with all the rights, privileges, and appurtenances to the same be-
45 longing or in any wise appertaining. And this deed further witnesseth that the said Anne L. Hunt, in her capacity as widow and relict of the said Wilson P. Hunt, deceased, for divers good causes her thereunto moving, and in consideration of the sum of one dollar to her in hand paid by the said Pierre Chouteau, junior, the receipt of which is hereby acknowledged, hath remised, released, and forever quit-claimed, and by these presents doth remise, release, and forever quit-claim unto the said Pierre Chouteau, junior, and his heirs and assigns, all dower and *light* of dower which she, the said Anne L. Hunt, hath or may claim of, in, or to the real estate of said deceased hereinbefore conveyed.

In testimony whereof the aforesaid Anne L. Hunt, administratrix as aforesaid, has hereto set her hand and seal the day and year first above written.

ANNE LUCUS HUNT, [SEAL.]
Administratrix, with the will annexed,
of Wilson P. Hunt, deceased.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that on this fourteenth day of June, one thousand eight hundred and forty-five, personally appeared before me the undersigned, justice of the county court of St. Louis, the within-named Anne L. Hunt, who is personally known to me to be the person whose name is subscribed to the within deed, as a party thereto, and acknowledged the same to be her act and deed for the purposes therein mentioned, and she further acknowledged that she freely and voluntarily relinquished all her right and claim to dower in the property thereby conveyed. Taken and certified the day and year above written.

ARCHIBALD GAMBLE, *Jus. C. C.*

Filed and received August 27th, 1845.

S. D. BARLOW, *Recorder.*

46 STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder for said county, certify the foregoing to be a true copy of an instrument in writing executed by Anne Lucus Hunt, administratrix, etc., together with the acknowledgment thereof, as the same remains of record in my office, in book T 3, page 250.

Witness my hand and official seal this 17th day of September, A. D. 1873.

[SEAL.] W. C. KENNETT, *Recorder.*

Chouteau to Jackson, Sept., 1851.

Deed of Chouteau to Jackson, 16 Sept., 1851.

This deed, made and entered into this sixteenth day of September, eighteen hundred and fifty-one, by and between Pierre Chouteau, jr., and Emilie Chouteau, his wife, of the city of St. Louis and State of Missouri, parties of the first part, and Samuel Jackson, of the same place, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of five hundred and forty-five dollars and sixty-two cents, to them paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bar-

gained, and sold, and by these presents do grant, bargain, and sell, convey, and confirm, unto the said party of the second part, a certain lot or parcel of ground, being in the western portion of United States survey, number 1953, and being part of a larger tract of land conveyed by the heirs of Pelagie Labardie to Wilson P. Hunt, by deed dated the 29th day of August, 1817, duly recorded in the recorder's office of the county of St. Louis, in book F, page 381 and following, and afterwards conveyed by the administratrix of said Wilson P. Hunt to said Pierre Chouteau, jr., by deed dated June 5th, 1845, recorded in said recorder's office, in
47 book T, No. 3, page 250; said lot thereby conveyed being lot number (10) ten, as laid down on a survey of said land, a diagram of which survey, together with a certain deed from said parties of the first part, made to one James Spencer, is duly recorded in said recorder's office, in book T, No. 4, page 89, and contains forty-three acres and sixty-five hundredths of an acre, ($43\frac{65}{100}$,) to have and to hold the same, together with all and singular the appurtenances thereunto belonging or in any wise appertaining, unto him, said party of the second part, and to his heirs and assigns forever; the said Pierre Chouteau, jr., party of the first part, hereby covenanting to and with the said party of the second part, that he, said party of the first, his heirs, executors, and administrators, shall and will warrant and defend the title to the premises, and every part thereof, unto him, said party of the second part, and to his heirs and assigns forever, against the lawful claim or claims of all and every person or persons whomsoever.

In witness whereof the said parties of the first part have hereto set their hands and seals the day and year in this behalf above written.

PR. CHOUTEAU, JR. [SEAL.]
EMILIE CHOUTEAU. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss :

Be it remembered that on the sixteenth day of September, eighteen hundred and fifty-one, before me, the undersigned, law commissioner of the county of St. Louis, came Pierre Chouteau, jr., and Emilie Chouteau, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned. And the said Emilie
48 Chouteau, having been by me first made acquainted with the contents of said conveyance, acknowledged, on an examination apart from her husband, that she executed the same, and relinquishes her dower in the real estate therein mentioned, freely and without compulsion or undue influence of her husband.

In testimony whereof I have hereto subscribed my name and affixed the seal of said court the day and year in this behalf above written.

[SEAL.] JOHN W. COLVIN,
Law Commissioner of St. Louis County.

STATE OF MISSOURI,
County of St. Louis, ss :

I, the undersigned, recorder in and for said county, certify that the foregoing instrument of writing was filed for record in my office Sept. 20, 1851, & is truly recorded in book Z, No. 5, page 224 & fol.

Witness my hand and official seal at the date aforesaid.

[SEAL.] S. D. BANLOW, *Recorder.*

Chouteau to Spencer, May 3d, 1848.

Deed of Chouteau to Spencer, May 3, 1848.

S. 82° 30′ E.

Due North. N. 79° 30′ E. Var. 8° E.

23.30 c.	19.29 c. No. 9. 44 $\frac{85}{100}$ 23.14	18 c. No. 8. 41 $\frac{74}{100}$ 23.22 c.	" No. 7. 41 $\frac{65}{100}$ 23.07 c.	" No. 6. 41 $\frac{38}{100}$ 22.91	" No. 5. 41 $\frac{19}{100}$ 22.75 c.	" No. 4. 40 $\frac{87}{100}$ 22.63	" No. 3. 40 $\frac{63}{100}$ 22.68	" No. 2. 40 $\frac{38}{100}$ 22.64 c.	18 c. No. 1. 40 $\frac{71}{100}$ 22.50 a.
22.50 c.	19.40 c. No. 10. 43 $\frac{85}{100}$ a. 19.40 c.	No. 11. 40 $\frac{50}{100}$ a.	No. 12. 40 $\frac{50}{100}$ a.	No. 13. 40 $\frac{50}{100}$ a.	No. 14. 40 $\frac{50}{100}$ a.	No. 15. 40 $\frac{50}{100}$ a.	No. 16. 40 $\frac{50}{100}$ a.	No. 17. 40 $\frac{50}{100}$ a.	No. 18. 40 $\frac{50}{100}$ a. 22.50 c.
22.50 c.	No. 27. 43 $\frac{74}{100}$ a.	No. 26. 40 $\frac{50}{100}$ a.	Western portion of U. S. Survey, No. 1953, Allotted to Gregoire Sarpy. No. 25. 40 $\frac{50}{100}$ a.	No. 24. 40 $\frac{50}{100}$ a.	No. 23. 40 $\frac{50}{100}$ a.	No. 22. 40 $\frac{50}{100}$ a.	No. 21. 40 $\frac{50}{100}$ a.	No. 20. 40 $\frac{50}{100}$ a.	No. 19. 40 $\frac{50}{100}$ a. 22.50 c.
22.50 c.	No. 28. 43 $\frac{95}{100}$ a. 19.55 c.	No. 29. 40 $\frac{50}{100}$ a. 18 c.	No. 30. 40 $\frac{50}{100}$ a. "	No. 31. 40 $\frac{50}{100}$ "	No. 32. 40 $\frac{50}{100}$ "	No. 33. 40 $\frac{50}{100}$ "	No. 34. 40 $\frac{50}{100}$ "	No. 35. 40 $\frac{50}{100}$ "	No. 36. 40 $\frac{50}{100}$ 18 c. 22.50 c.

N. 82° 30′ W.

49 This deed, made and entered into this third day of May, eighteen hundred and forty-eight, by and between Pierre Chouteau, jr., and Emily, his wife, of the city of Saint Louis, parties of the first part, and James Spencer, of the county of Saint Louis, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of four hundred and five dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, sold, and conveyed, and by these presents do grant, sell, and convey, unto the said party of the second part, a certain lot of ground in the county of Saint Louis & State of Missouri, & in the western portion of survey 1,953, and being lot No. sixteen, in the above diagram, and being part of a larger tract of land, conveyed by the heirs of Pelagie Labadie to Wilson P. Hunt, by deed dated the 29th day of August, 1817, duly recorded in book F, page 381, and afterwards conveyed by the administratrix of said Wilson P. Hunt to said Pierre Chouteau, jr., by deed dated June 5th, 1845, recorded in book T, No. 3, page 250, to have and to hold said lot, No. 16, containing, as per diagram, the quantity of forty and a half acres unto him, the said party of the second part, his heirs and assigns forever, the said Pierre Chouteau, jr., hereby covenanting that his heirs, executors, and administrators will warrant and defend the title to the said premises, and every part thereof, to him, the said party of the second part, his heirs and assigns, against the lawful claims of all persons whomsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

PR. CHOUTEAU, JR. [SEAL.]
EMILIE CHOUTEAU. [SEAL.]

50 STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that, on the third day of May, eighteen hundred and twenty-eight, before me, the undersigned, a justice of the peace within and for the county aforesaid, came Pierre Chouteau, jr., and

Emely Chouteau, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they severally acknowledged the same to be their act and deed for the purposes therein mentioned, and the *the* said Emilie, having been by *by* me first made acquainted with the contents of said conveyance, acknowledged, on an examination apart from her husband, that she executed the same, and relinquishes her dower in the real estate therein mentioned, freely and without compulsion or undue influence of her husband.

Taken and certified the day and year last aforesaid.

JOHN W. COLVIN,
Justice of the Peace.

Filed for record, May 16th, 1848.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for the county aforesaid, certify the foregoing to be a true copy of an instrument in writing, executed by Pierre Chouteau, jr, and wife, together with the certificate of acknowledgment thereof, as the same remain on record in my office, in book T, page 89.

Witness my hand and official seal this 17th day of September, 1873.

[SEAL.] W. C. KENNETT, *Recorder.*

Power of attorney from Chouteau to John P. Sarpy, Nov. 7, 1845.

Power of attorney from Chouteau to Jno. B. Sarpy, Nov. 7, 1845.

Know all men by these presents that we, Pierre Chouteau, jr.,
51 and Emilie Chouteau, wife of said Pierre, have made, constituted, and appointed, and by these presents do make, constitute, and appoint John B. Sarpy, of the city and county of Saint Louis, and State of Missouri, our true and lawful attorney, for us and in our names and stead, and for the use, benefit, and behoof of all whom it may concern, to sell, dispose, convey, and alien unto such person or persons and for such sums of money and prices as our said attorney may deem proper, all our right, title, and interest, whatsoever the same may be, in and to the whole or any part, parcel, or portion of any or all of certain tracts of land and town lots conveyed to said Pierre Chouteau, jr., by Anne Lucas Hunt, administratrix with the will an'exed of Wilson P. Hunt, late of St. Louis County, deceased, by order of the probate court of St. Louis County, and by deed dated the fifth day of June, eighteen hundred and forty-five, and filed for record in the recorder's office of St. Louis County on the twenty-seventh day of August, eighteen hundred and forty-five, and recorded in said office, in record-book T, No. 3, page 250 & following, to which said deed, for a full description of the lands and town lots or lots intended to be effected by this power of attorney, reference is hereby made. And we hereby authorize and empower our said attorney to ask, demand, sue for, recover, and secure all such sum or sums of money as may be due and unpaid by or upon the sale of the said lands & lots above mentioned or any part thereof, and for us and in our names to make, execute, sign, seal, and deliver unto the purchaser or purchasers of all or any portion of said lands or lots, all deeds, contracts, conveyances, and assignments which may be necessary, either at law or in equity, for the full and lawful conveyance of all or any portion of said lands or lots to the purchaser or purchasers thereof. And the said

52 Emilie Chouteau, wife of said Pierre Chouteau, by her signature to these presents and her acknowledgment thereof, hereby relinquishes all her right of dower in and to the whole or any portion of said lands or lots conveyed by virtue of the authority herein granted to the purchaser or purchasers thereof, and unto their heirs and assigns forever. It is expressly understood, however, that the power herein granted to convey as aforesaid, shall apply to and effect only the lands and lots conveyed to said Pierre Chouteau, jr., by said Anne L. Hunt, by said above-mentioned deed, recorded as aforesaid in book T, No. 3, page 250 and following, and shall under no pretence and in no wise whatever effect or be of any avail for the conveyance of sale of any other property, real or personal, belonging to said Pierre Chouteau, jr., or Emily, his wife, in the city and county of Saint Louis and State of Missouri; hereby ratifying and confirming all and singular the acts and deeds of our said attorney lawfully done in the premises as fully and to all intents and purposes as if we were ourselves personally present acting and doing the same.

Witness our hands and seals at the city of St. Louis, this seventh day of November, eighteen hundred and forty-five.

PR. CHOUTEAU, JR. [SEAL.]
EMILIE CHOUTEAU. [SEAL.]

Done in presence of—

NOTE.—The word "hereby" interlined over an erasure of eight words in bottom line on 1st page before signing.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this 7th day of November, eighteen hundred and forty-five, before a justice of the peace in and for said county, personally appeared Pierre Chouteau, jr., and Emilie, his wife, who are personally known to me to be the persons whose names are sub-
53 scribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned. She, the said Emilie, being by me first made acquainted with the contents of said instrument, acknowledged, on an examination separate and apart from her husband, that she executed the same and forever relinquishes her dower in all real estate conveyed by virtue of the power therein granted, freely and fully, and without the compulsion or undue influence of her said husband.

Taken and certified the day and year last aforesaid.

GEORGE A. HYDE, *Justice.*

Filed and recorded February 16th, 1846.

S. D. BARLOW, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify the foregoing to be a true copy of an instrument in writing, executed by Pierre Chouteau, and wife, together with the certificate of acknowledgment thereof, as the same remain of record in my office, in book Y 3, page 76.

Witness my hand and official seal this 17th day of September, 1873.

[SEAL.] W. C. KENNETT, *Recorder.*

Chouteau by Sarpy to Milner, December 7, 1849.

Deed of Chouteau by Sarpy to Milner, Dec. 7, 1849.

This deed, made and entered into this seventh day of December, eighteen hundred and forty-nine, by and between Pierre Chouteau, junior, and Emilie Chouteau, his wife, of the county of Saint Louis, Missouri, parties of the first part, and James Milner, of the same place,
54 party of the s'ond part, witnesseth: That the said parties of the first part for and in consideration of the sum of four hundred and ten dollars and ninety cents, to them paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, convey and confirm, unto the said party of the second part, a certain lot or parcel of ground, lying and being in the western portion of United States survey No. 1953, and being part of a larger tract of land conveyed by the heirs of Pelagie Labadie to Wilson P. Hunt, by deed dated the 29th of August, 1817, and recorded in the recorder's office of the county of Saint Louis, in book F, page 381 & following, and afterwards conveyed by the administratrix of said Wilson P. Hunt to said Pierre Chouteau, junior, by deed, dated June 5th, 1845, and recorded in the recorder's office of said county, in book T, No. 3, page 250. Said lot hereby conveyed being lot number five, as laid down on a survey of said land, a diagram of which survey, together with a certain deed from Pierre Chouteau, junior, & wife, to James Spencer, is recorded in the recorder's office aforesaid, in book T, No. 4, page 89. Said lot contains forty-one and nine one-hundredths acres, and is bounded and described as follows: Commencing at a stone from which a hickory six inches in diameter bear S. 2½° W., 70 links distant, and a black-jack, 8 inches in diameter, bears W. 1° W. 43 links distant: thence running W. 7½ E. 22.91 chains, to a stone, from which a hickory, 12 inches in diameter, bears S. 16° W. 115 links distant, and a hickory, 5 inches in diameter, bears S. 59½° E. twenty-seven links distant; thence running S. 82½° E. 18 chains to a stone, from which a black-jack, 9 inches in diameter bears S. 37°, E. 29 links distant, and a black-jack, 9 inches in diameter, S. 62° W. 44 links distant; thence running S. 7½° W. 22.75 chains to a stone, from which a post-oak, 9 inches in diameter,
55 bears N. 14½° E. 54 links distant, and a black-jack, 14 inches in diameter, bears N. 64½° W. 20 links distant; thence running N. 82½° W., 18 chains to the place of beginning: To have and to hold the same unto him, the said party of the second part, and to his heirs and assigns forever; the said Pierre Chouteau, junior, hereby covenanting to and with the said party of the second part that he, his heirs, executors, and administrators, shall and will warrant and defend the title to the premises, unto him, said party of the second part, and to his heirs and assigns forever, against the lawful claim or claims of all and every person or persons whomsoever.

In witness whereof the said parties of the first part, by their attorney in fact, John B. Sarpy, have hereto set their hands and seals the day and year first above written.

PRE. CHOUTEAU,
By JOHN B. SARPY, *Attorney.* [SEAL.]
EMILIE CHOUTEAU,
By JOHN B. SARPY, *Attorney.* [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that, on the seventh day of December, eighteen hundred and forty-nine, before me, the undersigned, a justice within and for the county aforesaid, come Pierre Chouteau, jr., and Emilie Chouteau, his wife, by their attorney in fact, John B. Sarpy, who is personally known to me to be the person whose name is subscribed to the foregoing deed as such attorney, and acknowledged the same to be the act and deed of the said Pierre Chouteau, jr., and Emilie Chouteau, his wife, for the purposes therein mentioned.

Taken and certified the day and year last aforesaid.

JOHN W. COLVIN,
Justice of the Peace.

56 Filed and recorded January 29, 1850.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for the county aforesaid, certify the foregoing to be a true copy of an instrument in writing, executed by Pierre Chouteau, jr., and wife, by their attorney in fact, John B. Sarpy, together with the certificate of acknowledgment thereof, as the same remain on record in my office, in book L 5, page 123.

Witness my hand and official seal this 30th day of September, 1873.

[SEAL.] W. C. KENNETT, *Recorder.*

(Here follows map marked page 56.)

It is admitted that the defendant, under his deed from Chouteau, has had actual, open, continuous and uninterrupted adverse possession of the premises in dispute, for more than twenty years prior to the commencement of this suit. The following plat or survey by Cozzens indicates by red lines thereon the boundaries of the survey by Soulard, as described by him in his notes, and figurative plat of the survey for Gregoire Sarpy, on the river Des Peres. Said Cozzens, in surveying and tracing the lines of said Soulard's survey, found evidences of the old Soulard line, on the west, also the island and white-walnut on the northwest corner, from which it appears, that by taking said Soulard's west and south line, and following the meanders of the river Des Peres, there were included in it $2,179\frac{61}{100}$ acres, or $2,563\frac{15}{100}$ arpens. The
57 yellow lines correspond with U. S. survey No. 1953. To make 4,002 arpens, which Soulard says were included in his survey, if the river Des Peres made the eastward boundary, said plat of survey by Cozzens would require the west line to be as marked on said plat by north and south corners, "4,002 line." The premises in dispute are not included in the original survey by Soulard, whether the same be limited to the calls whereby $2,563\frac{15}{100}$ arpens or 4,002 arpens are required; that is, the premises in dispute are entirely outside and west of either of said requirements of the Soulard survey on the Des Peres. The quantity included in Soulard's survey on the Maramec, when retraced, is 1,040, instead of 1,400 arpens. No U. S. survey confirmation or grant was ever made for said tract on the Meramec to said Gregoire Sarpy, or his representatives.

The order of survey by Recorder Bates, if the calls therefor are literally followed, puts the tract mentioned in his descriptive list, under the

acts of 1814, and 1816, entirely outside of survey No. 1953; that is, reverses the position of the tract by placing the same east instead of west of the river Des Peres.

58 *Order of survey by Recorder Bates.*

No. of cert.	To whom confirmed or granted.	Nature of claim and where recorded.	Quantity and situation.	Boundaries, remarks, etc.	Survey, at whose expense.
	Gregoire Sarpy.	Con. C., p. 264.	A league square. 1st survey 4,002 arpens, on River des Peres, about 260 ps. below the forks.	N. 890 ps. W. 165 ps., S. 110 ps., W. 515 ps., S. 140 ps. to the River des Peres, & down the same to the beg. of 2d survey of 1,400 arps.; S. 22 W. 520 ps., S. 68 E. 200 ps., N. 22 E. 520 ps., N. 68 W. 200 ps.	U. S.

OFFICE OF THE U. S. RECORDER OF LAND-TITLES,
Saint Louis, September 22, 1873.

This is to certify that the above is a true, full, and correct abstract from a book marked "Descriptions of confirmed claims returned by Recorder Bates to the surveyor general," which book is up to this day preserved on file in this office.

STILLMAN O. FISH, *Recorder.*

59 Upon the foregoing facts the court declares the law to be:

First. That the foregoing deed of Jeremiah Connor, sheriff, to Pierre Chouteau, dated June 29th, 1808, is inoperative as a conveyance, because it was not acknowledged as required by the laws then in force.

Second. Said deed is admissible in evidence as explanatory of the subsequent conveyances which expressly refer thereto.

Third. The deed of Bernard, Pratte, and others, to Wilson P. Hunt, (including Gregoire Sarpy and wife and among the grantors,) dated the 29th day of August, 1817, was a confirmation of said Sarpy of the sale by sheriff Connor in 1808 to Pierre Chouteau.

Fourth. The last-mentioned deed conveyed to said Hunt all the tracts of land therein described, which had been previously confirmed, and also Sarpy's interest in all other tracts of land described therein, to which said Sarpy had a claim under concessions by the Spanish government.

Fifth. That by virtue of said last-mentioned conveyance, the grantees under said Hunt, to said land, and claims, because the legal representatives of Gregoire Sarpy, as to the premises in dispute, through survey No. 1053, the patent certificate No. 1033, said act of Congress, approved August 11th, 1842, and the patent dated February 1, 1869, and said legal representatives acquired the title to all the tract of land in said patent described.

Sixth. The title to the premises in dispute, thus acquired from the United States by said legal representatives passed by operative and valid conveyances to the defendant.

Whereupon the court declares that the plaintiff is not entitled to recover, and orders judgment to be entered for defendant, with costs.

60 And afterwards, at said last-mentioned term of said circuit court, begun and held as aforesaid, the following further proceed-

ings were had in this cause on Saturday, the 29th day of November, A. D. 1873, to wit:

Writ of error allowed.—Bond filed.

JAMES L. D. MORRISON ET AL., PLAINTIFFS,
vs.
SAMUEL JACKSON, DEFENDANT. } Petition.

This day come the plaintiffs, by their attorney, and present to the court a citation directed to said defendant, and a writ of error, and a bond with surety, duly executed as required by law; and said citation is thereupon signed by the judge, the writ of error allowed, and the bond approved, and ordered to be filed and made a part of the record in this case.

The bond filed as aforesaid is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, James L. D. Morrison, as principal, and James O. Broadhead, as surety, are held and firmly bound unto Samuel Jackson in the full and just sum of five hundred dollars, to be paid to the said Samuel Jackson, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 29th day of November, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas lately, at the September term, A. D. 1873, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between James L. D. Morrison, Julia A. A. S. Morrison, his wife, and Edward Abend, trustee of said Julia A. A. S. Morrison, plaintiffs, and Samuel Jackson, defendant, judgment was rendered against the said plaintiffs, and the said plaintiffs having
61 obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Samuel Jackson, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden in Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said James L. D. Morrison, Julia A. A. S. Morrison, his wife, and Edward Abend, trustee of said Julia A. A. S. Morrison, shall prosecute said writ to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

JAMES L. D. MORRISON. [SEAL.]
Pr. SAML. N. HOLLIDAY, *his Atty.* [SEAL.]
JAMES O. BROADHEAD. [SEAL.]

Approved by

SAMUEL TREAT, *Judge.*

62

UNITED STATES OF AMERICA:
Circuit Court for the Eastern District of Missouri, ss:

I, Austin Drake, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto

annexed to be a transcript of the record and proceedings in case of James L. D. Morrison et al., plaintiff, against Samuel Jackson, defendant, No. 163, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this thirty-first day of December, in the year of our Lord eighteen hundred and seventy-three.

[SEAL.]

AUSTIN DRAKE, *Clerk*,
By H. C. GEISBERG, *Deputy*.

(Indorsed:) ⁄ 163. United States circuit court eastern district of Missouri. James L. D. Morrison et. al., against Samuel Jackson. Duly-certified transcript of the record and proceedings in the above-entitled cause.

(Indorsement on cover:) No. 139. James L. D. Morrison, Julia A. A. S. Morrison, his wife, and Edward Abend, trustee of the said Julia A. A. S. Morrison, plaintiffs in error, vs. Samuel Jackson. E. Missouri C. C. U. S. Filed 24th January, 1874.

In the Supreme Court of the U. S.

JAMES L. D. MORRISON,
and others,
Plaintiffs in Error,
vs.
SAMUEL JACKSON,
Defendant in Error.

October Term, 1875.

No. 139.

GLOVER & SHEPLEY,
For Defendants in Error.

In the Supreme Court of the U. S.

JAMES L. D. MORRISON,
and others,
Plaintiffs in Error,
vs.
SAMUEL JACKSON,
Defendant in Error.

October Term, 1875.
No. 139.

STATEMENT OF THE CASE

—BY—

GLOVER & SHEPLEY, *for Defendant in Error.*

This was a suit in ejectment brought by the plaintiffs in error, in the Circuit Court of the United States for the Eastern District of Missouri, against Samuel Jackson, to recover the possession of a tract of land at the western end of the United States Survey No. 1953.

The origin of the title is as follows:

1. On the 28th of October, 1802, Charles D. Delassus, Spanish Lieutenant-Governor of Upper Louisiana, made to Gregoire Sarpy, a concession of 6,000 arpents of land, upon his petition, "to be "taken from along the River des Pères, and in the woodland parts "that belong to the domain of the King."

2. On the 18th of March, 1803, in obedience to an order of the Governor, as contained in said concession, Soulard, surveyor, surveyed and designated by courses, distances, corners, and monuments upon the ground, and made a figurative plan of the same, a tract of land, *part* of the said concession, upon the River des Pères about eight miles from St. Louis, supposed to contain 4002 arpents, and made the River des Pères the eastern boundary of said tract of land so surveyed by him. This was all the land ever surveyed upon the River des Pères under the concession.

3. On the 15th of April, 1804, another survey was made upon this concession by Soulard, twenty miles from St. Louis, upon the

river Merimack, "in the woodland domains of the king," and returned a figurative plat, and supposed to contain 1400 arpents.

4. This claim for 6000 arpents was presented, by Gregoire Sarpy, before the Board of Commissioners, under the act of 2nd of March, 1805, and supplementary acts, and was by said commissioners rejected on the 9th of December, 1811.

5. Pending its examination before the Board, upon an execution issued against Gregoire Sarpy in 1808, the sheriff of St. Louis County levied upon and sold, "4002 arpents of land on the River "des Pères, being the same more or less" and "being a part of "the quantity of 6000 arpents granted to said Sarpy on the 28th "of October, 1802," and made a deed for the same to Pierre Chouteau on 29th of June, 1808.

6. On the 30th of June, 1808, Pierre Chouteau and wife by deed conveyed to Madame Pelagie Chouteau, widow Labadie, "just as "I have acquired it from the sheriff," among other pieces of land, "also another land of 4002 arpents, also situated on the River des "Pères, and another land of 1400 arpents situated on the River "Merimack, the two last lands forming a part of a concession of "6000 arpents granted to said Gregoire Sarpy by Charles D. "Delassus on the 28th of October, 1802."

7. By stipulation of the parties in the record it is agreed, that Madame Labadie died in the year 1813, intestate, leaving five heirs, viz.: Emily L., intermarried with Bernard Pratte; Sophia intermarried with Auguste Chouteau; Marie Antoinette intermarried with John Little; Pelagie intermarried with Gregoire Sarpy, and Sylvester Labadie, her son who inherited her estate; and that the plaintiff Julia A. A. S. Morrison is the grand-daughter of Gregoire Sarpy, and one of his three living heirs, and that the plaintiff James L. D. Morrison is the grantee of Virginia Sarpy Peugniet, another of the grand-daughters, and one of his three living heirs,—and that the said Gregoire Sarpy and Pelagie his wife died before the commencement of this suit—the said Gregoire in the year 1824.

8. On February 2, 1816, Frederick Bates, who was recorder of land titles, made his report to the Commissioner of General Land Office, inclosing tabular lists, four in number; in the 3rd this claim is reported as confirmed, by the first section of the act of 1814, to the extent of a square league, which is 7056 arpents.

9. That on the 29th of August, 1817, Gregoire Sarpy, with his wife and the other heirs of Madame Labaddie, sold, as the defendant contends, the whole tract of 7056 arpents to Wilson P. Hunt, by deed set out in the record at page 21, and the principal portions of which will be found in the brief with covenants of warranty. It is through this deed that defendant claims.

10. On the 7th of May, 1818, Langham, U. S. Surveyor for Missouri, surveyed "for Gregoire Sarpy, who claims in his own

"right," 7056 arpents on the River des Pères, and designated the survey thereof on the township plats as Survey No. 1953. This survey embraces the whole of the original Spanish survey of 4002 arpents.

11. On the 13th, September, 1825, a patent [illegible] issued by the recorder of land titles at St. Louis, No "*Gregoire Sarpy or his legal representatives*" pents as contained in Langham's Survey No. 1953, a the same to Washington for a patent.

12. The land department refused to issue a patent [illegible] certificate for the reasons assigned in the special finding of the Court. (See page 14, of printed record.)

13. On the 11th of August, 1842, Congress passed an act entitled "an act for the relief of Gregoire Sarpy or his legal representatives," as follows: "It shall be the duty of the proper officers "of the United States to issue a patent to Gregoire Sarpy, or his "legal representatives, for seven thousand and fifty-six arpents con- "taining six thousand and two acres, and fifty-hundredths of an acre "of land, pursuant to Patent Certificate number one thousand and "thirty-three, dated September 13th, one thousand eight hundred "and twenty-five, and to the survey thereof, numbered one thousand "nine hundred and fifty-three, certified by the surveyor of Illinois, "Missouri and Arkansas at St. Louis, on the 13th day of Sep- "tember, one thousand eight hundred and twenty-five."

14. The United States issued its Patent dated February 1, 1869, reciting therein the foregoing act of Congress, the patent certificate and survey granting the land described in the United States Survey No. 1953, to Gregoire Sarpy or his legal representatives.

The defendant, Jackson, had been in possession of the tract of land sued for, for more than twenty years prior to the commencement of the said suit, adverse to plaintiff, having acquired it from P. Chouteau, Jr., who acquired it from the legal representatives of Wilson P. Hunt.

The tract of land conveyed to Jackson, and possessed by him, was outside of the tract described in the sheriff's deed to Chouteau, and outside of Soulard's survey of 4002 arpents, and was west of portion of the concession so surveyed by Soulard, and in the western part of U. S. Survey No. 1953.

The Court made a special finding of facts, and thereupon made the following declarations of law:

First, That the foregoing deed of Jeremiah Connor, Sheriff, to Pierre Chouteau, dated June 29, 1808, is inoperative as a conveyance, because it was not acknowledged as required by the laws then in force.

Second, Said deed is admissible in evidence as explanatory of the subsequent conveyances which expressly refer thereto.

Third, The deed of Bernard Pratte and others to Wilson P.

river Merimack, "in the woodland domains of the king," and returned a figurative plat, and supposed to contain 1400 arpents.

4. This claim for 6000 arpents was presented, by Gregoire Sarpy, before the Board of Commissioners, under the act of 2nd of March, 1805, and supplementary acts, and was by said commissioners rejected on the 9th of December, 1811.

5. Pending its examination before the Board, upon an execution issued against Gregoire Sarpy in 1808, the sheriff of St. Louis County levied upon and sold, "4002 arpents of land on the River "des Pères, being the same more or less" and "being a part of "the quantity of 6000 arpents granted to said Sarpy on the 28th "of October, 1802," and made a deed for the same to Pierre Chouteau on 29th of June, 1808.

6. On the 30th of June, 1808, Pierre Chouteau and wife by deed conveyed to Madame Pelagie Chouteau, widow Labadie, "just as "I have acquired it from the sheriff," among other pieces of land, "also another land of 4002 arpents, also situated on the River des "Pères, and another land of 1400 arpents situated on the River "Merimack, the two last lands forming a part of a concession of "6000 arpents granted to said Gregoire Sarpy by Charles D. "Delassus on the 28th of October, 1802."

7. By stipulation of the parties in the record it is agreed, that Madame Labadie died in the year 1813, intestate. leaving five heirs, viz.: Emily L., intermarried with Bernard Pratte; Sophia intermarried with Auguste Chouteau; Marie Antoinette intermarried with John Little; Pelagie intermarried with Gregoire Sarpy, and Sylvester Labadie, her son who inherited her estate; and that the plaintiff Julia A. A. S. Morrison is the grand-daughter of Gregoire Sarpy, and one of his three living heirs, and that the plaintiff James L. D. Morrison is the grantee of Virginia Sarpy Peugniet, another of the grand-daughters, and one of his three living heirs,—and that the said Gregoire Sarpy and Pelagie his wife died before the commencement of this suit—the said Gregoire in the year 1824.

8. On February 2, 1816, Frederick Bates, who was recorder of land titles, made his report to the Commissioner of General Land Office, inclosing tabular lists, four in number; in the 3rd this claim is reported as confirmed, by the first section of the act of 1814, to the extent of a square league, which is 7056 arpents.

9. That on the 29th of August, 1817, Gregoire Sarpy, with his wife and the other heirs of Madame Labaddie, sold, as the defendant contends, the whole tract of 7056 arpents to Wilson P. Hunt, by deed set out in the record at page 21, and the principal portions of which will be found in the brief with covenants of warranty. It is through this deed that defendant claims.

10. On the 7th of May, 1818, Langham, U. S. Surveyor for Missouri, surveyed "for Gregoire Sarpy, who claims in his own

"right," 7056 arpents on the River des Pères, and designated the survey thereof on the township plats as Survey No. 1953. This survey embraces the whole of the original Spanish survey of 4002 arpents.

11. On the 13th, September, 1825, a patent certificate was issued by the recorder of land titles at St. Louis, No. 1033, "*To "Gregoire Sarpy or his legal representatives*" for 7056 arpents as contained in Langham's Survey No. 1953, and transmitted the same to Washington for a patent.

12. The land department refused to issue a patent on the certificate for the reasons assigned in the special finding of the Court. (See page 14, of printed record.)

13. On the 11th of August, 1842, Congress passed an act entitled "an act for the relief of Gregoire Sarpy or his legal representatives," as follows: "It shall be the duty of the proper officers "of the United States to issue a patent to Gregoire Sarpy, or his "legal representatives, for seven thousand and fifty-six arpents con- "taining six thousand and two acres, and fifty-hundredths of an acre "of land, pursuant to Patent Certificate number one thousand and "thirty-three, dated September 13th, one thousand eight hundred "and twenty-five, and to the survey thereof, numbered one thousand "nine hundred and fifty-three, certified by the surveyor of Illinois, "Missouri and Arkansas at St. Louis, on the 13th day of Sep- "tember, one thousand eight hundred and twenty-five."

14. The United States issued its Patent dated February 1, 1869, reciting therein the foregoing act of Congress, the patent certificate and survey granting the land described in the United States Survey No. 1953, to Gregoire Sarpy or his legal representatives.

The defendant, Jackson, had been in possession of the tract of land sued for, for more than twenty years prior to the commencement of the said suit, adverse to plaintiff, having acquired it from P. Chouteau, Jr., who acquired it from the legal representatives of Wilson P. Hunt.

The tract of land conveyed to Jackson, and possessed by him, was outside of the tract described in the sheriff's deed to Chouteau, and outside of Soulard's survey of 4002 arpents, and was west of portion of the concession so surveyed by Soulard, and in the western part of U. S. Survey No. 1953.

The Court made a special finding of facts, and thereupon made the following declarations of law:

First, That the foregoing deed of Jeremiah Connor, Sheriff, to Pierre Chouteau, dated June 29, 1808, is inoperative as a conveyance, because it was not acknowledged as required by the laws then in force.

Second, Said deed is admissible in evidence as explanatory of the subsequent conveyances which expressly refer thereto.

Third, The deed of Bernard Pratte and others to Wilson P.

Hunt (including Gregoire Sarpy and wife among the grantors), dated the 29th of August, 1817, was a confirmation by said Sarpy of the sale of Sheriff Connor in 1808 to Pierre Chouteau.

Fourth, The last mentioned deed conveyed to said Hunt all the tracts of the land therein described which had been previously confirmed, and also Sarpy's interest in all other tracts of land described therein, to which said Sarpy had a claim under concessions by the Spanish Government.

Fifth, That by virtue of said last mentioned conveyance, the grantees under said Hunt to said land and claims, became the legal representatives of Gregoire Sarpy as to the premises in dispute, through Survey No. 1953, the Patent Certificate No. 1033, said act of Congress approved August 11, 1842, and the patent dated February 1, 1869, and said legal representatives acquired the title to all the tracts of land in said patent described.

Sixth, The title to the premises in dispute, thus acquired from the United States by said legal representatives, passed by operative and valid conveyances to the defendant.

Whereupon the Court declares that the plaintiff is not entitled to recover, and orders judgment to be entered for defendant, with costs.

BRIEF FOR DEFENDANT IN ERROR.

The defendant, for a defense to this action maintains that he has shown himself the legal representative of Gregoire Sarpy, for the land sued for, and that it is unimportant whether the title to the land be supposed to have passed out of the United States only at the issuing of the Patent in 1869, or prior thereto, and that it only becomes important in the event that this proposition is decided against the defendant; and in such case, he expects to be able to show that the title passed out of the United States at least as early as the passage of the act of Congress for the relief of Gregoire Sarpy, or his legal representatives, in 1842, and as in 1869 the defendant had been in continuous possession for ten years prior to that time, and which possession continued down to the commencement of this suit, the defendant became the legal representative of Gregoire Sarpy, under the patent, as well as establishing a defense under the statute of limitations. We will consider these questions upon these different assumptions, as to the time the title to this land passed out of the United States.

First:

On the assumption as claimed by plaintiffs, that no title passed out of the United States for the land in controversy, to any one un-

til the issuance of the patent dated the first day of February, 1869, to Gregoire Sarpy, or his legal representatives.

On this assumption as to the situation of the title, we say:

I.

The patent shows that it was issued as a ministerial act in accordance with the obligation imposed upon the officers of the Government by the act of August 11, 1842, entitled "an act for the "relief of Gregoire Sarpy, or his legal representatives."

If, therefore, we seek for the consideration for the grant, we are forced to look at the act to ascertain whether it is for money paid to the United States; whether it be conferred for valuable services rendered the United States, or whether it be a recognition of a subsisting inchoate right, existing as an equitable right, which the United States was willing to recognize. Indeed, if the patent be considered as conveying the title alone, and the act be regarded as only directory to the officers of the Government, yet by the words of the patent calling, as it does, for the patent certificate and survey, based on an antecedent claim, any person, taking title under it, takes it as it is given as based upon and the final culmination of title of the antecedent claim.

II.

The act of the 11th of August, 1842, of the Congress of the United States, is based upon, and on its face purports to be but the final consummation of the prior acts of the officers of the Government, which it thus validates (if it were needed), and makes effectual, and which prior acts are by necessity carried into and made part of the act itself.

Without reference to these prior acts of the officers of the Government, there is no description of any land for which a patent was to issue. It is there stated that it was to issue for 7,056 arpents of land, not for services by Gregoire Sarpy rendered to the Government, nor on account of any purchase money paid by Gregoire Sarpy to the Government, but *pursuant* to Patent Certificate No. 1,033, dated the 13th of September, 1825, and to the survey of the said land certified by the Surveyor of Illinois and Missouri, on that day. It therefore necessarily connects itself, and calls for the antecedent action of the officers of the Government in issuing the patent certificate, and making and certifying the survey to which the grant, when made effectual by law and patent, necessarily attaches itself. Nobody has yet seen a patent certificate for land emanating from the officers of the United States, that had no antecedent—that was based upon nothing—that was the coinage of the brain of the officers who issued it. No power is given the officer who issues it thus to send it out, unless it is by reason of something that has gone before, and of

which this certificate is one of the steps to enable the party to whom it is issued, to obtain a title to land. Therefore, it is clear that we must look beyond the certificate to determine what relation the patent has to what has gone before.

III.

When we look beyond the patent certificate, we find that it has its inception and attaches itself to the survey No. 1953; that the survey No. 1953 was made by a deputy surveyor of the United States in 1818, which survey was returned to the Surveyor General of Illinois and Missouri, and was returned by him to the United States Recorder of Land Titles in 1825, as being surveyed in satisfaction of a confirmation by act of Congress of the 29th day of April, 1816, of Recorder Bates' decisions.

When now we come to examine what it is to which that patent certificate and survey attach themselves, we find that it is to what is alleged to have been a confirmation by the act of the 29th of April, 1816, of the decisions of Recorder Bates, under certain acts of Congress, and a survey of the land which was confirmed, or supposed to be confirmed, by the United States, which this act validates. If it validates it, the act validates it as a whole, and you are thrown back through all its stages, both to know what it is the act operates upon, and to know what and whose rights it affects and who are entitled to enjoy the benefits conferred by the act.

But in fact the act does more than this. It is a legislative confirmation of the claim of Sarpy, as reported by Recorder Bates. If the decision of Recorder Bates, as reported to Congress, upon this claim was not confirmed by the act of the 29th of April, 1816, by reason that the acts of Congress in reference to claims originating after the 1st of October, 1800, prohibited the Recorder from considering it, or because the claims included in Bates' tabular list No. 3, were not confirmed by the act; yet it was entirely competent for Congress to take this specific claim up and confirm it then, or subsequently. If in the same act, Congress had specifically confirmed all the claims reported by Recorder Bates for confirmation in Bates' third tabular list, or had specifically confirmed this particular claim by name, then there could be no question both that the claim would have been confirmed just as fully as any other claim, or that the same effect would result from the confirmation as having its inception in the original claim filed by Gregoire Sarpy, and as to whom the land thus confirmed would belong as in case of any claim confirmed contained in one of the other lists reported by him for confirmation.

Let us examine the act of Congress itself, and consider what is its operation and effect. It is entitled, "an act for the relief of "Gregoire Sarpy or his legal representatives." "Be it enacted: "That it shall be the duty of the proper officers of the United

"States to issue a patent to Gregoire Sarpy or his legal representa-
"tives, for 7,056 arpents containing 6,002 acres and $\frac{50}{100}$ of an acre
"of land pursuant to Patent Certificate number 1033, dated Septem-
"ber 13, 1825, and to the survey thereof numbered 1953, certified
"by the Surveyor of Illinois, Missouri and Arkansas, at St. Louis,
"on the 13th day of September, 1825," and was approved August 11, 1842.

Now suppose that this, instead of being an act passed in 1842, had been added as an additional section to the act of the 29th day of April, 1816, these words: "SEC. 4. It shall be the duty of the "proper officers of the United States to issue a patent to Gregoire "Sarpy or his legal representatives, for the land recommended for "confirmation to him, as reported by Recorder Bates in the third "list of claims transmitted by him;" can there be any question as to its operation and effect upon the claim of Gregoire Sarpy? If there had been any legislative bar which it had been necessary to remove, before by general words of confirmation that bar could be considered as removed, would those words not have removed it and placed the claim of Gregoire Sarpy in the same condition as any other claim taken up by the Recorder and reported for confirmation, and subject to the application of the same rules and principles as attach to other claims confirmed? If this be so, what is the effect of the act of 1842, but to do in 1842, by a special act what might have been done in 1816, by an additional section, namely, to confirm the recommendation of Recorder Bates of that particular claim.

But the act of 1842 is more than this. If the addition of such a section as proposed would have been a legislative confirmation conveying at least the equitable title, then the act of 1842 goes further, because it not only operates as a legislative confirmation, but appropriates the particular land to its satisfaction, stating therein that the patent was to issue *pursuant* to a Patent Certificate No. 1033, which patent certificate on its face stated that "pursuant to acts of Con-"gress respecting claims to land in the Territories of Orleans and "Louisiana, and Territory of Missouri, the claim of Gregoire Sarpy, "for the quantity of 7,056 arpents, *has been duly confirmed.*" What is this but an expression of the legislative interpretation that the patent certificate had been rightfully issued upon the claim as *confirmed*, and that, as it had been surveyed, it was for the right quantity?

The legal effect of this act thus would be that the claim would be in the same condition in 1842 that claims confessedly confirmed by the act of the 29th day of April, 1816, were.

What that condition is we will hereafter consider.

IV.

If then this patent necessarily connects itself with something that has gone before, and is but the final act of a confirmation of a claim made by Gregoire Sarpy, before the first Board of Commissioners, then that title passes to Gregoire Sarpy, if living and if he had not conveyed it: if he be dead, not having conveyed it, then to his heirs or devisees; but if he had conveyed it, then to his grantees, whether they be such by operation of law or conveyance from him. That this is the legal operation and effect where the claim has been presented by the original claimant, and where the confirmation or patent is made to the original claimant "*or to his legal* "*representatives*" has been conclusively established by repeated decisions of the Supreme Court of the United States.

In the case of *Hogan* vs. *Page*, 2 Wall., p. 607, the Court says: "This formula, '*or his legal representatives*,' embraces represen- "tatives of the original grantee in the land by contract, such as "assignees or grantees as well as by operation of law and leaves the "question open to inquiry in a Court of justice, as to the party to "whom the certificate patent or confirmation should enure," and says that the formula was adapted in order that its legal operation should be that stated above.

In the case of *Carpenter* vs. *Rannels*, 19 Wall., 145, the Court re-affirms the decision made in *Hogan* vs. *Page*, as to the legal effect of the form of words made use of in describing the grantee.

So in the case of the *St. Louis Gas Light Company* vs. *Reiss*, in the Supreme Court of Missouri, 33 Mo. R., 551, which was a confirmation "to the legal representatives of John Baptiste "Provonchere," the Court held that "the confirmation enured to "Provonchere, if he was living and had not conveyed the property. "If he had conveyed the land it enured to his assignee, and it only "enured to the heirs if Provonchere was dead and had not conveyed his claim."

The position now taken by the plaintiffs that they take title as congressional grantees not as heirs of Gregoire Sarpy was contended for as early as in the case of *Menard* vs. *Massey*, in 8 Howard, 20, but received no countenance from the Court.

This was the legal operation and effect of the granting words of this act, whether Gregoire Sarpy was dead or alive at the time the act of 1842 was passed, or at the time the patent issued, but as he died prior to 1842, and prior to the patent, the law of May 20, 1836, (5 U. S. Statutes at large, p. 31,) comes in in support of the position we maintain (if any were needed) where it provides that "when the patentee be dead at the date of the patent the title shall "enure to his heirs, devisees or *assignees*."

But the plaintiffs say even if all you say be true yet there were no assignees of Gregoire Sarpy in this case and could be none.

To this we say:

V.

Assuming that no title and no equitable right passed out of the United States until the passage of the act of 11th of August, 1842, yet Gregoire Sarpy held such inchoate right in the land as to make it the subject of conveyance by him at any time after it had its origin.

This position is strenously resisted by the appellants on the ground that there was no valid inceptive or inchoate right in Gregoire Sarpy at any time, and therefore there never was anything to convey; that the act of 1842 was a pure donation to the heirs of Gregoire Sarpy; that however much the United States might be disposed in 1842, to acknowledge an inchoate right as having at one time existed in Gregoire Sarpy, yet as in point of fact no such inchoate right did exist, all such admissions or acknowledgments go for nothing in determining who took the bounty of the Government.

This position is taken by the appellants on two grounds, First, That all concessions, grants and surveys made by the Spanish authorities after the date of the treaty of St. Ildefonso of October 1, 1800, are absolutely void for want of power to make them, and Second, That all such grants were expressly declared void by act of Congress of the 26th of March, 1804, (2 U. S. Statutes at large, 287, sec. 14,) as is alleged.

We deny both of those propositions. As to the fact, that all titles in the Territory of Louisiana made after the 1st of October, 1800, are void we say:

(*a.*) That the rights or claims originated in the Territory of Louisiana after the treaty of St. Ildefonso, whether they took the form of a completed grant or of an inchoate title would have been binding upon the conscience of France to perfect, had she ever taken actual possession of the ceded province.

(*b.*) As the United States became the sovereign of the country by cession from France, before France had taken possession or had any opportunity to perfect these titles, the moral obligation to make good and confirm all honest and fair claims originating while Spain had the actual dominion of the country, was transferred to the United States by the fact of such cession and by the treaty, and the claims originating after the treaty of St. Ildefonso are on the same footing as any other inchoate claims binding only upon the conscience of the sovereign.

(*c.*) The treaty obligations never at any time operated as of binding obligation upon the United States, except as to perfected grants, and the United States by declaratory law refused to recognize any such grants made after October 1, 1800, as perfected grants, or as binding upon the conscience of the Government.

The act of 1804 was passed within about a month after the United States had taken possession of the ceded province. Con-

gress had been made to believe that great frauds had been attempted to be perpetrated by the officers of the former government just before the cession, by making grants of immense tracts to themselves and their favorites, of the public domain, both of choice agricultural lands and mineral tracts, and under that impression, and with a view to prevent these supposed frauds, inserted this prohibition.

(*d.*) As to every other claim for lands emanating from the officers of the former governments, who held dominion over the country ceded, they were binding only upon the conscience of the United States, and all appealed to the equity of the United States as well those issued by the government existing after October 1, 1800, as before.

There was held in the case of *Davis* vs. *The Police Jury of Concordia*, 9 How., 280. At page 291, it is said "the inceptive equity "of grants made by the governors of remote territories who do not "know that a cession has been made may be recommended to the "kind consideration of the sovereign who receives the transfer, but "no more can be claimed."

(*e.*) The United States, while protecting itself by the 14th section of the act of 26th of March, 1804, from the effect of admitting the perfected grants made by the proper officers of the Spanish Government after the 1st of October, 1800, to be valid grants, protected by the provision of the treaty by which the Territory was ceded to the United States, yet in that first act recognized the obligation when made to an actual settler and limited its confirmation to the limit of one mile square.

This act it must be recollected was passed a few days after the United States had taken possession of the country and before any knowledge had been acquired of what was the condition of things as to title to land.

But the very next year, Congress by the second section of the act of 1805,* and by the fourth section authorizes both those grants which were completed after October 1, 1800, and those that were initiated after that date, but were incomplete, to be filed.

It still declines (except in cases of actual settlers) to allow *at that time* its officers to take cognizance of or pass upon the validity of those claims, but the only effect upon such claims was as in the case of other inchoate claims that they were in abeyance until the government chose to act upon them.

So whatever may be considered to be the effect of the first section of the act of 1814 (5 Stat. at large, 121) upon the land in controversy in this suit it is undeniable that it included all those cases of incomplete French or Spanish grants, or concession or warrant or order of survey, which was granted prior to the 20th of December, 1803, in Louisiana, or before the 10th day of March, 1804, in Missouri who were residents, and whose claims had been filed and were embraced

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* (authorized confirmations to all who were actual setlers under the usages of the Spanish Government prior to the 20th Dec. 1803.)

in the report of commissioners, register or recorder, *when* it shall appear by the report that such grant, etc., contained a special location or had been located or surveyed by the proper surveyor, prior to those dates ~~were confirmed by that act,~~ and this is a complete recognition of the existence of such inchoate rights, and that they appeal as much to the conscience of the sovereign as inchoate rights which had their origin prior to the 1st of October, 1800.

The appellants feel the force of the words of this section upon their idea of an absolute nullity for all purposes of this concession, and try to escape it by contending that it must be interpreted to mean that incomplete grants, surveys, etc., made by Spain, prior to October 1, 1800, and the same made by France after October, 1800, and prior to the taking possession of the country, should be and are confirmed. That this could not possibly be the correct construction, for the reason that there were in fact no complete or incomplete grants made by France in this territory, between October 1, 1800, and prior to its cession. What it did refer to when speaking of French grants, etc., were those made by France when she had possession of prior to her cession of it to Spain.

(*f.*) But if there was any prohibition by which such claims could not be passed upon and adjudicated by any tribunal that might be instituted to pass upon and confirm claims under the former governments, such prohibition was removed by the act of July 9, 1832, when the Commissioners were to examine and pass upon "all unconfirmed claims founded upon any incomplete grant, concession, etc., issued *by authority of France or Spain*, prior to the 10th day of March, 1804," and to class the same so as to show "what claims in their opinion would in fact have been confirmed according to the laws, usages and customs of the *Spanish* Government, and the practice of the *Spanish* authorities under them at New Orleans, if the Government under which said claims originated had continued in Missouri." See first section of that act, 4 U. S. Stat. at large, p. 565-6, and observations thereon in case of *Menard* vs. *Massey*, 8 How., at page 307-8; so also the act of the 22d day of June, 1860 (12 U. S. Statutes, at large, p. 85), and the observations upon it in case of the *United States* vs. *Lynde*, 11 Wall., at pp. 646-7.

The act of the 4th of July, 1836, confirming the report of the last Board of Commissioners (5 Statutes, at large, p. 126), confirmed at least sixty-three claims, many of them without any survey and almost all, if not all, without any actual settlement which originated subsequent to October 1, 1800. Such were the decisions numbered 9, 20, 21, 39, 41, 72, 76, 78-79, 85-86, 89-90, 104, 117, 119, 148, 159, 174, 179, 183, 186, 195, 202 to 230 inclusive, 239, 240, 247, 249, 251, 254, 255, 266, 288, 307, 308, 314, concession of Charles Dehault Delassus, Lieutenant-Governor of Upper Louisiana, and to be found in Documents of House of Representa-

tives No. 59, Senate Documents No. 16, 1st session of twenty-fourth Congress, and partially in Vol. 5 of Public Lands (edition of Duff & Green), pages 702 to 838. These confirmations were all to the claimant, "or his legal representative," and no one has yet been found, in the face of the decisions that have been made, to contend that the persons who were the heirs of the claimant on the 4th of July, 1836, took the title to the exclusion of those who had acquired during the life of the claimant, all the right to the inchoate title out of which the confirmation arose, which the claimant possessed. If when the United States confirmed a concession issued after October 1, 1800, to the claimant and his legal representatives, in case of an actual settler, the title enured to whomsoever should show title under the original claimant, from the time of the grant, it is not seen why when the United States chose to confirm just such a grant (as in this case), where there had been no settlement proved in precisely the same form of words, that a different rule prevails. The confirmation here is precisely such a confirmation as in the 63 cases under the act of the 4th of July, 1836, except that this was a special confirmation in this case.

VI.

If then we may consider it settled that the act of 1842, and the patent treats this as the confirmation of an inchoate claim exhibited before the first Board of Commissioners by Gregoire Sarpy, and that the effect of the words of the grant used in the act and patent, is to vest the title of the land granted in the assignee of Gregoire Sarpy, if Sarpy had before the grant conveyed it away, we now come to consider whether the record shows such a conveyance.

In construing the deed of the 29th of August, 1817, to Wilson P. Hunt from Gregoire Sarpy and others, we must recollect what was the state of the title at that time. The claim had been presented by Sarpy for 6,000 arpents as claimed under the concession of Delassus, and had been returned by Recorder Bates to the Commissioner of the General Land Office, as having been confirmed under act of Congress, and even supposed to have been confirmed by act of the 29th of April, 1816, and that there had then been no survey of that confirmation. There had been sales of portions of the tract claimed by the sheriff prior to that time, and deeds made by the sheriff to Chouteau, who, the next day, for the consideration of one dollar, conveyed it to the mother-in-law of Sarpy—Mrs. Labadie—who, after the conveyance to her of the portions sold by the sheriff, had died leaving her daughter, Mrs. Sarpy, surviving her with other children.

With the validity of that sheriff's sale we have nothing to do, as the land in controversy in the *Jackson suit* lies outside of the portion sold by the sheriff, and those deeds will not be further referred

to except as far as may be necessary in construing the deed of the 14th of August, 1817.

The respondent does not controvert the position taken by appellants that the intention as gathered from the whole face of the deed must govern the construction of the instrument—indeed, he invokes the principle; but he is amazed at the application which the appellants make of the principle to the deed in question. If there was ever a deed made which leaves no doubt as to the *intention* of the grantors, it would seem to be this. Whatever might be the effects of technical rules of construction upon the instrument, there can scarcely be two opinions as to the intention manifest upon the face of the deed. At the time of this conveyance, Frederick Bates, Recorder of Land Titles, had in February, 1816, returned his tabular lists, four in number, in one of which he had reported this claim of Gregoire Sarpy as confirmed to the extent of a league square, or 7,056 arpents, with other claims, "principally under the act of "Congress of 12th of April, 1814," and the act of 29th of April, 1816, was passed confirming, as was supposed, all of the claims reported by Bates for confirmation; and which beyond question did operate to confirm all such which had been surveyed under the former government.

We are not considering now whether the recorder was prohibited from considering or acting upon the claim by reason of its having been issued subsequent to October 1, 1800, in the light of subsequent decisions, but how it presented itself to the grantors and grantees, and which was that there had been a confirmation to Gregoire Sarpy, under that concession, of a tract of land on the River des Pères of a league square in one body. This being the situation of things, we come now to consider what it was they intended to, and did, convey.

The deed purports to be a conveyance to Wilson P. Hunt by Bernard Pratte and Emily Labadie Pratte, his wife, Auguste P. Chouteau and Sophia Labadie Chouteau, his wife, John Little and Marie Antoinette Little, his wife, Silvestre Labadie and Victoria Gratiot Labadie, his wife, and Gregoire Sarpy and Pelagie Labadie Sarpy, his wife, as individuals, for the consideration of $20,000, of two tracts of land "on the River des Pères heretofore conceded under the "authority of the Spanish Government, to the said Gregoire Sarpy, "the one granted to the said Gregoire Sarpy under the authority "aforesaid by Charles Dehault Delassus, Lieutenant-Governor for "the time being of the District of St. Louis, in the province of "Upper Louisiana, by a concession, bearing date the 20th of Octo-"ber, 1802, in the figurative plan and certificate of survey made "thereof by order of the Lieutenant-Governor aforesaid, described "as follows, to-wit:"—(going on to describe by metes and bounds that portion surveyed the 18th of March, 1803, and stating that it was supposed to contain 4002 arpents, be the same more or less.)

The deed then proceeds to describe the other tract lying on the River des Pères, known as the Antoine Reelke Tract, and which had been originally granted to Reelke and Widow Camp, and the Reelke portion, having been purchased by Gregoire Sarpy, was subsequently divided between them under authority of Lieutenant-Governor Delassus; and with which we have no concern in this suit. The deed then proceeds: "which said two tracts of land were subsequently "confirmed to the said Gregoire Sarpy under authority of the Gov- "ernment of the United States of America, by a board of commis- "sioners, appointed with authority to confirm the same, which con- "firmation was finally ratified by an act of Congress and President "of the United States, in that case made and provided, *being all "the lands on the said River des Peres, at any time granted "to said Gregoire Sarpy, under the authority of the Spanish "Government, or claimed by him under the said Antoine "Reelke, or confirmed to him by the Government of the Uni- "ted States.*"

Thus far the deed clearly manifests the intention to convey to Hunt everything on the River des Pères which was ever granted to Gregoire Sarpy, and confirmed to him by the Government of the United States.

Now immediately succeed the words which the plaintiffs rely upon as limiting, confining and qualifying the scope and effect of the grant thus made to that portion of the tract sold by the sheriff, and specifically described in his deed to Chouteau, viz.: "and being "also two of the tracts of land heretofore sold by Jeremiah Con- "nor, Sheriff of the county of St. Louis to satisfy certain debts of "the said Gregoire Sarpy, (in virtue of executions to him for that "purpose directed) to Pierre Chouteau, and by the said Chouteau "and Sancier Chouteau, his wife, by deed bearing date the 30th day "of June, 1808, conveyed to Madame Pelagie Chouteau v^e^ Laba- "die, and which descended from her (she being now dead) to the said "Bernard Pratte, Emily Labadie Pratte, Auguste P. Chouteau, and "Sophia Labadie, John Little and Marie Antoinette Little, Sylves- "tre Labadie and Victoria Gratiot Labadie and Gregoire Sarpy and "Pelagie Labadie Sarpy."

Upon those words and the previous words of description of boundary, the plaintiffs make a most elaborate argument that it was the intent of the deed to confine the grant, as made, to the tract of 4002 arpents, being the portion of the concession surveyed prior to the change of government, when in order to do it you have to render meaningless the elaborate and repeated grant of all that land granted to Gregoire Sarpy on this River des Pères, and confirmed to him by the United States; and in order to make the whole which has gone before to perfectly harmonize, have only to read it as expressing the intention to embrace what was specifically described as forming part of what has been conveyed by general description.

But suppose that were so—it can only relate to, and effect the conveyance which has been made in that portion of the deed which has been heretofore set out and commented upon.

Now immediately follows an entire, distinct and independent grant—so independent that it forms a deed with *independent words of grant by itself*—in these words, "*and we do hereby* "*give and grant, bargain and sell, alien en feoff, release and* "*confirm, to the said Wilson P. Hunt, his heirs and assigns,* "*forever, all the land which we may be entitled to in virtue* "*of the said concessions, or of the confirmation whereby the* "*same was confirmed to the said Gregoire Sarpy, by the* "*Board of Commissioners of the United States of America,* "*acting under the authority of the said United States, and* "*the act of the President and Congress of the said United* "*States*, to have and to hold the said two tracts of land with all "ways, waters, woods, houses, out-houses, mills, easements, privi- "leges, and advantages thereon, *or arising out of, or accruing* "*from, the said concession or confirmation* to him the said "Wilson P. Hunt, his heirs or assigns forever."

Bear in mind the condition of this tract at the time this conveyance was made. That it had been returned by Recorder Bates, acting as Commissioner to the Commissioner of the Land Office, and reported for confirmation under the act of 1814, and that subsequently the act of the 29th of April, 1816, was passed by Congress by which all the claims contained in Bates' report were supposed to have been confirmed; that no survey by the United States had ever been made of the tract conceded to Sarpy by the Spanish Government, and no survey by any one of that concession except of a portion thereof by the surveyor of the Spanish Government, and then tell us what possible purpose can this last separate and independent grant have been intended to subserve, except to convey beyond any question all land that by possibility could be embraced in or come out of the concession or confirmation, when it should be determined by a proper survey what it embraced. It would seem as if the draftsmen of the instrument had anticipated the very argument made by the counsel on the other side, and had resolved to place the matter beyond question by making a new and specific independent grant of every thing that could be embraced, in and by that concession. Unless it was intended thus to operate, it was senseless, for no one can contend that the 4002 tract and the Reelke tract had not been before particularly described, so that nothing could be added to make that grant definite.

Then look at the *habendum* clause and tell us for what reason that remarkable addition to it of the words "or arising out of, or "accruing from the said concession or confirmation," unless it was intended to mark and emphasize that the grant as made in the instrument did embrace, and was intended to embrace all the lands

that by possibility, that concession or the confirmation of it could possibly carry.

But Hunt, the grantee, was not even content with this and insisted upon a covenant of warranty not in the ordinary form but in a form fitted to embrace the particular case, and to insure that, whatever title they had or could have in that concession, or the lands embraced therein, they covenanted to protect him in the enjoyment of the covenant, in these words: "and we do hereby warrant, and for our-"selves, our heirs, executors and administrators, do covenant to de-"fend to the said Wilson P. Hunt, his heirs and assigns, forever, "the rights, titles, possession and enjoyment into and of the said "lands, and all privileges and advantages thereunto appurtenant, *or* "*arising out or accruing from the same as above mentioned*, "against the right, title and claim of all and every person or per-"sons whatsoever."

Why this particularity unless it was intended that the covenant should embrace all possibilities that could arise or accrue from or out of the concession, as well as the specific land described, and that the grantee should be assured in his title to everything contained in or embraced by that concession. We are not considering the effect of this warranty upon the plaintiffs claiming under Gregoire Sarpy, but only the effect of the words made use of as indicating the *intention* of the grantors of conveying to Hunt the concession, and everything that could be embraced by it.

Taken together, if words can make an intention plain, it would seem clear that it was the intention of the grantors in this deed to convey to Hunt all of these concessions, that had been located by a survey or surveys lying on the River des Pères, and in addition thereto, all that could possibly come out of the concessions, as they might thereafter be located by the United States by survey.

When they made this conveyance, three things appeared beyond dispute to these grantors: 1st, That there had been a concession of 6,000 arpents to Gregoire Sarpy; 2d, That there had been a survey of part of that concession of 4002 arpents; and 3d, That it had been reported to Congress, as having been confirmed for a league square.

Therefore, when a sale was made it was the intention of the grantee to require a conveyance of, and of the grantors to give everything that could be included and embraced by the concession when the United States should come to locate it by survey.

We have not thought it necessary to consider the very elaborate argument and citation of authorities in reference to the questions of *relation* and *enurement* made by appellant for the reason that these questions seem to us to a great extent altogether outside the case.

The doctrine of relation might well have been invoked by us if the grant had been made directly to Gregoire Sarpy, individually, as

held in the case of *Landis* vs. *Brant*, 10 How., 346, or in the case of an entry as held in *French* vs. *Spencer*, 21 How., 240.

So likewise we might have invoked the doctrine of enurement, but the decisions of the Supreme Court seem to us so clear and uniform as to the legal effect of the terms made use of in the grant, that it does not seem to us at all necessary.

VII.

But there is an estoppel against the plaintiff, taking title as they do under the act of 1842, under the terms of that act, which the counsel have taken no note of but which operates against the government as well as against the plaintiffs, and that is, the recital in the patent certificate that the claim had been confirmed under laws of the United States.

The patent as issued, is a mere ministerial act and derives all its force from the act of 1842, and all the title that the plaintiffs can have, comes from that act and all recitals in that act or adoptions of matters previously done, bind these plaintiffs.

When a deed recited that A. and B. were the only heirs of C. the makers were concluded by it. 32 Mo., p. 285, *Clamorgan* vs. *Green*.

The recital of a deed in another deed is proof of the recited deed, and binds all persons claiming under it like an estoppel. 4 Peters, p. 1, 83, 88, *Carver* vs. *Jackson*.

The recital that the granter has a certain sort of title estops him to deny that fact and also such as claim under him. 11 How., 297, *VanRansselaer* vs. *Kearney, et al.*

A. recited in his deed that the lot conveyed by it was bounded east by the lot of P. and it was held A. was estopped thereby to deny title to the lot claimed by P. 3 Mo., 529, *Primm* vs. *Layage*.

Recitals in a deed or survey, though not binding on strangers, are binding and conclusive on parties to them, and all claiming under it. 3 Binney, 179, *Barnett* vs. *Devebaugh*.

A patent from the State of Pennsylvania recited seven conveyances of the lands mentioned in it. Held the recitals were conclusive upon the State, the patentee and all claiming under it. 4 Binney, 237 *Penrose* vs. *Griffith*.

VIII.

Even if the position of the plaintiffs were good, that in 1817 there was no valid inceptive right to convey, and therefore however perfect the description no title passed, yet any after acquired title to any land embraced in that concession coming to said grantors or their heirs enured to and became vested in Hunt and his grantees by virtue of the warranty contained in the deed of 1817.

The plaintiff has made a very elaborate argument against this result on the ground, First, That nothing was conveyed or warranted but the 4002 arpent tract, portion of the tract conceded, and, Second, If this be not so, as a warranty it amounts to nothing at any rate beyond the 4002, because the deed can be nothing but a grant of present interest in any thing beyond it.

But this is begging the whole question. Suppose that no survey of any portion of this concession had been made under the former Government, and that the granting words were intended to and did convey the whole concession, what warrant is there for saying that the warranty did not operate to vest any after acquired title to what might be surveyed by the United States as embraced under that concession? In the case we have supposed, the intention would have been to warrant that the grantors held the title to all the land embraced in that concession, and it could by possibility have no other intent, as otherwise it would be entirely inoperative. Is there any thing in law that prevents such a warranty from having the effect intended? The cases cited do not prove it, and we maintain that nothing can be found maintaining a contrary view.

Let us now look again at the words used in the clause of warranty.

The plaintiffs say that the clause was intended to embrace only the laws specifically described in the first grant, but there is no warrant for that construction of the term "said lands," as those words may, and from the context, evidently were intended to include and apply to the lands embraced in the concessions, which construction is made plain by the succeeding words "and all privileges "and advantages thereto appurtenant or arising out of, or accruing "from the same *as above mentioned*," etc.,—the *above men-* "*tioned*" matters and things embracing the concessions as specifically granted.

What other reason can be imagined in using such words unless it was intended to warrant to the grantee, that for whatever land the United States should survey in satisfaction of said concession and confirmations, the grantors warranted that they had full and perfect title.

Second:

If the decision of the Circuit Court of the United States be correct as to the force and effect of the deed of Gregoire Sarpy and others to Wilson P. Hunt, of the 29th of August, 1817, and as to the legal effect of the words, "to Gregoire Sarpy or his legal re- "presentatives," as used in the patent, it is of no manner of importance whether the title passed out of the United States at the time of the issuance of the patent, or at the time of the passage of

the act of the 11th of August, 1842, or the 29th of April, 1816. If the construction of this deed as made by the lower court be correct, we are equally "the legal representative" of Gregoire Sarpy, under any of these acts or under the patent. It is only if it be decided that the deed of Sarpy and others to Hunt is inoperative, or operative only to convey that portion of the concession surveyed by Soulard of 4002 arpents, that it becomes important, in view of our long possession, and the defense as set up, under the statute of limitations, to examine when the title passed out of the United States.

As to this we say:

I.

If there was no valid confirmation to this land, either by the act of the 12th of April, 1814, or by the 29th of April, 1816, yet the title passed out of the United States by the act of the 11th day of August, 1842.

The recorder had made his report to the Commissioner of the General Land Office, that Gregoire Sarpy, or his legal representatives, had been confirmed in his claim, under this concession, to the extent of a league square. Suppose the recorder to have been mistaken in this, and also that the act of 1816 did not operate upon or confirm this tract, yet what was the situation of things when the act of 1842 was passed? The local officers had considered it as confirmed; had proceeded to have it surveyed, as having been confirmed; the survey had been made, returned to the Surveyor General of Illinois and Missouri, and been by him approved and returned to the Recorder of Land Titles, and a patent certificate had been issued thereon, and the Commissioner of the General Land Office had refused to issue a patent thereon on the ground that it included more land than had been originally located in place.

Now what was the effect of the act of 1842? The words are these:

"It shall be the duty of the proper officers of the United States "to issue a patent to Gregoire Sarpy, or his legal representatives, "for seven thousand and fifty-six arpents containing 6002 acres and "$\frac{36}{100}$ of an acre of land, pursuant to patent certificate number "one thousand and thirty-three, dated September thirteenth, one "thousand eight hundred and twenty-five, and to the survey thereof "numbered one thousand nine hundred and fifty-three, certified by "the surveyor of Illinois, Missouri and Arkansas, at St. Louis, on "the thirteenth day of September, one thousand eight hundred "and twenty-five."

If this has no relation to anything that has gone before, but is used only as a description of lands which the Congress of the United States, out of great affection for a dead man, chose to donate to his heirs, as the plaintiffs contend, then there would be some ground to contend that it manifested only an intention to donate the lands to

become perfect only when the officers of the government had performed their duty.

But if this be the final action of Congress upon a title claimed to have its inception under the former government, and which had been presented for confirmation before tribunals established by Congress for the purpose of confirming such claims, and which had been reported to Congress by the recorder, whether acting as recorder or commissioner, as confirmed under an act of Congress; and had been surveyed in place, and a patent certificate issued thereon, by the officers of the United States, therein stating it as having been confirmed by act of Congress; then this final action of Congress thereon is an absolute confirmation of the lands, as surveyed, and for which the patent certificate issued, and the subsequent patent was but a muniment of title, and it is brought directly under that class of cases pointed out by this court in *Langdeau* vs. *Hanes*, 21 Wall., 521, when the title passes by the act of Congress, the patent serves the purpose of furnishing a muniment of title to the confirmee, and also in *Marsh* vs. *Brooks*, 14 Howard, 513, at page 524, and *Grignon* vs. *Astor*, 2 How., 244.

If this be the true effect and legal operation of the special act of 1842, then it matters little to the defendant, whether the conveyances of Gregoire Sarpy, and als. to Wilson P. Hunt, be effectual to pass title to this land or not, for he possesses it under the laws of the State of Missouri by a title just as efficient, viz.: by adverse possession to plaintiffs for more than twenty years before the commencement of this suit.

This possession, under the decisions of the State of Missouri, is just as effectual as a conveyance.

Biddle vs. *Mellen*, 13 Mo., 335.
Blair vs. *Smith*, 16 Mo., 273.
Shaw vs. *Nicholay*, 30 Mo., 9.
Warfield vs. *Lindell*, 38 Mo., 561.
Nelson vs. *Bradback*, 44 Mo., 567.
Wall vs. *Schindler*, 47 Mo., 282.
Fugate vs. *Pierce*, 49 Mo., 441.
Crispin vs. Hannafram, 50 Mo., 536.
Dalton vs. *Bank of St. Louis*, 54 Mo., 105.
Barry vs. *Otto*, 56 Mo., 177.

If the plaintiff, after the passage of the act of 1842, could have maintained a suit, then by the force and effect of the Statute of Missouri, in 1869, our possession had ripened into a title, and as to the land that the defendant had been in possession of for more than ten years prior to 1869, he was the "*representative*" under any one claiming that land under that act.

So the adverse possession by defendant for more than ten years prior to the commencement of this suit was a perfect bar *to* a recovery in this suit.

Third:

We have hitherto considered this case as if there was no confirmation of this claim by the act of the 29th of April, 1816, and have attempted to show that the defendant has the title irrespective of the act under which it was cnofirmed.

We now propose to show that the claim was confirmed by that act, and the general understanding for these many years of the effect of that act, as to the confirmation of the claims mentioned in the recorder's tabular list No. 3, equally with the others, was not at fault. The plaintiffs contend that it is certain that this claim was not confirmed by that act, for substantially the following reasons: First, Because the recorder was prohibited by the 14th section of the act of 1804 from considering it, the claim having been declared void by that act, as having its inception subsequent to the treaty of St. Ildefonso. Second, That if the recorder could have considered it at all, it would have been only of that portion of the concession which had been surveyed in place. Third, That the recorder was mistaken in supposing that it had been confirmed by the act of April 12, 1814, to any extent, and therefore his recommendation that it be confirmed to an extent not exceeding a league square was unauthorized, and, Fourth, That the act of 29th of April, 1816, did not intend to confirm, and did not by its terms confirm, the claims recommended for confirmation in the recorder's tabular list No. 3, which embraced this claim.

Suppose the plaintiffs to be right in their first three propositions, but wrong in their fourth proposition, what does it profit them? We do not think it of sufficient importance to discuss whether the first three propositions be right or wrong, and therefore assume that the plaintiffs are right, yet it does not alter the fact that the recorder did include in, his report sent to Commissioner of the General Land office, and laid before Congress, this claim as having embraced within the provisions of the act of the 12th of April, 1814, and recommended in his report that it be confirmed to an extent not exceeding a league square.

The Congress of the United States had before this time found out that the Spanish authorities had not, as they feared, in 1804, proceeded, in the period between the treaty of St. Ildefonso and the cession to the United States, to parcel out the whole territory between themselves, their favorites and dependents, and was in altogether different frame of mind from what it had been when the act of 1804 was passed. When, therefore, Congress came to consider the question of confirming the recommendations of the recorder, as contained in his report, and finding that there were no confirmations recommended of over a league square, it paid no sort of attention

to the *time* when the grant was made, so that it was in Missouri prior to the 10th of March, 1804.

That this is so, we think will be apparent when we come to consider the terms of the second section of the act of the 29th of April, 1816. (3 U. S. Statutes at Large, p. 328.)

The second section provides * * * that "all claims em-"braced in the report of the recorder of land titles acting as com-"missioner, &c., * * * when the decision is in favor of the "claimant *shall be, and the same are hereby confirmed*, to-wit: "confirmation of village claims under act of Congress, 13th of June, "1812; grants of the late board, &c., * * * * extended by "virtue of the 4th section of act of 3d of March, 1813; *grants "and confirmations under the several acts of Congress, com-"mencing with the act of 13th of June*, 1812."

It will, therefore, be seen that the act in the last class mentioned confirmed both grants and *confirmations* and that it confirmed grants and confirmations under more than one act of Congress, and that they were those grants and confirmations under the act of the 13th of June, 1812, and any act relating to the subject matter passed subsequent to the act of the 13th of June, 1812.

Now it could not refer to the act of the 3d of March, 1813, because the act had already specifically mentioned the extension of grants of the late board, made under that act. Therefore it must have intended grants and confirmations under the act of the 12th of April, 1814, recommended for confirmation embraced in the report, as that is *the only act* passed prior to 1816 relating to the subject matter.

Congress in considering this matter took the view that inchoate claims, originating under the former government subsequent to 1st of October, 1800, were just as meritorious as claims originating before that time, and that there is no more sense in requiring actual settlement (as the act of 1804 did) for confirmation in the case of claims originating subsequent to October 1, 1800, than there would be in requiring actual settlement in order to be confirmed in claims originating prior to that time, and we will not continue this unjust and absurd distinction. It in effect says that the recorder in his report has said that he considered the claims contained in the tabular list No. 3, as embraced within the provisions of the act of April 12, 1814, and has specifically recommended it for confirmation to the extent of a league square; we therefore confirm it as recommended in that report.

If this be the true construction of the act of the 29th of April, 1816, what follows? If follows:

First, That there was by that act a legislative confirmation of this claim which needed no patent, and that the patent when issued was a muniment of title, but added nothing to the title which passed by the act itself.

Marsh vs. *Brooks*, 14 How., 524.
Grignon vs. *Astor*, 2 How., 244.
Langdeau vs. *Harris*, 21 Wall., 5

And, *Secondly*, That the title having passed out
April, 1816, our defense is perfect under the statute

GLOVER & SHEPLEY,
For Defendants in Error.

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Marsh vs. *Brooks*, 14 How., 524.
Grignon vs. *Astor*, 2 How., 244.
Langdeau vs. *Harris*, 21 Wall., 521.

And, *Secondly*, That the title having passed out of the U. S. by the act of April, 1816, our defense is perfect under the statute of limitations.

GLOVER & SHEPLEY,
For Defendants in Error.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

MORRISON AND WIFE,
vs.
WM. H. BENTON. } No. 140.

MORRISON AND WIFE,
vs.
JACKSON. } No. 139.

Brief of P. PHILLIPS,

FOR PLAINTIFF IN ERROR.

R. O. Polkinhorn, Printer, Washington, D. C.

Supreme Court, United States.

MORRISON AND WIFE,
vs.
WM. H. BENTON.
} No. 140.

Brief of P. PHILLIPS.

FOR PLAINTIFFS IN ERROR.

This is an action instituted in the Circuit Court U. S. for the Eastern District of Missouri, to recover certain lands in the county of St. Louis.

The case was tried without a jury by stipulation of the parties.

The court made a special finding of the facts, on which judgment was rendered in favor of defendant below, and to review this judgment is the object of the present writ of error.

This special finding is set forth in the record from page 8 to page 38, and is followed by a stipulation of counsel as to certain facts.

ASSIGNMENT OF ERROR.

The defendants assign for error the following declarations of law made by the court and recorded on p. 40, to wit :

The deed of Sheriff Connor to Chouteau in 1808,

though inoperative as a conveyance, is admissible in evidence as explanatory of the subsequent conveyance which expressly refers thereto.

The deed of Pratt and others of the 29 August, 1817, to Wilson P. Hunt, was a confirmation by Sarpy (one of the grantors) of the sale by said sheriff to Chouteau.

The said deed conveyed all the tract of land therein described, which had been previously confirmed, and also Sarpy's interest in all other tracts of land described therein, to which said Sarpy had a claim under concession by the Spanish Government.

By this deed the grantees of Hunt to said land and *claims*, became the "legal representatives" of Gregoire Sarpy through survey 1953, patent certificate 1,033, act 11 August, 1842, and patent, 1 February, 1869, and acquired title to all the tracts of land described in the patent.

The title to the premises in dispute, acquired from the United States by said legal representatives, passed by operative conveyances to defendant.

The defendants aver that each and all of these declarations of law, as applied to the evidence, are erroneous, and that on the special finding, the law is with the plaintiff in error, and judgment should have been rendered in his favor.

The title of the defendant below rests upon the deed of 1817, made to Hunt, which is recorded page 21, and by which it is contended, Sarpy conveyed not only the tracts of land described therein, but also all his "claims" arising out of a certain concession.

To properly understand this deed it is necessary to advert to what preceded it.

On 26th October, 1802, Sarpy presented his petition to Delassus, asking a concession of 6,000 arpents, "to be taken from along the River Des Peres, *and in the woodland parts that belong to the domain of the king.*"

The concession was made as prayed for, and on the 18 March, 1803, Soulard in conformity thereto, surveyed in presence of Sarpy a tract of 4,002 arpents on said River Des Peres, and notes in his certificate of survey that Sarpy "reserved to himself the faculty of choosing the complement of his concession in *one or more vacant portions of the royal domain.*"

On the 15 April, 1804, Soulard made a second survey for Sarpy, on the River Marremeck of 1,400 arpens, and in this certificate of survey declares "that the totality of the two surveys makes 5,402 arpents, which lacks the quantity of 598 arpents to complete the quantity of 6,000 arpents conceded to him. pp. 8, 9, 10.

On 29 June, 1808, the sheriff, Conner, by virtue of certain executions against Sarpy made a sale and deed to Chouteau of all Sarpy's interest "to a certain tract of land situated on the River Des Peres, being *part* of the quantity of 6,000 arpents granted to him by the concession of Delassus, the said tract containing 4,002 arpents, more or less."

This deed, as we have seen, was declared by the court to be inoperative to pass title, by reason of its defective execution, but allowed in evidence for the purpose of a description of the premises.

On the following day, to wit; the 30 June, 1808, Chouteau made his deed to the widow Labadie, by which he sells and relinquishes to her just as he acquired it from sheriff Connor at the sale of Sarpy's property, as

appears by the sales on the 29 and 30, three tracts of land, one for 1,632 arpents, a second for 4,002 arpents, situate on the River Des Peres, and the third for 1,400 arpents, situate on the River Marremeck, "the two last forming a part of the concession of 6,000 arpents granted to Sarpy by Delassus on 28 October, 1802." p. 20.

It is here to be noted that there is no deed from the sheriff to Chanteau *except for the one tract of* 4,002 *arpents.*

The widow Labadie being thus invested with title, died intestate in 1813, leaving four daughters and one son. Sarpy married one of the daughters, and both husband and wife died in 1824.

Mrs. Morrison, one of the plaintiff's in error, is a grand daughter of Sarpy, and one of his three heirs, her husband the other plaintiff in error, is the grantee of one of the other heirs.

On the 11 August, 1842, the following act was passed:

"It shall be the duty of the proper officers of the United States to issue a patent to Gregoire Sarpy, or his legal representatives, for 7,056 arpents or 6,200$\frac{50}{100}$ acres, pursuant to a patent certificate No. 1,033, dated 13 September, 1825, and the survey thereof No. 1,953, certified by the surveyor of Illinois, Missouri and Arkansas at St. Louis, on 13 September, 1825. (Private land laws p. 854.)

The parties on both sides of this controversy claim that they are the "legal representatives" of Sarpy, designated by the act.

The pivotal question in the case is therefore the construction of this deed of 1817. What did it convey?

The deed is executed by the four daughters, heirs of the widow Labadie, and their husbands join in its execution.

The property conveyed, is described as "*that which descended from the widow Labadie,*" *being the same as was sold by Sheriff Conner to Choutcau, and by him to the widow Labadie.*

The conveyance is of two *tracts of land*, one being a tract originally granted to Antoine Reilhe, the consideration of which is not material, as it forms no part of this controversy.

The other tract is referred to, as the one granted to Gregoire Sarpy on 20th October, 1802, and described in "the figurative plan and certificate of survey made thereof by order of the Lieutenant Governor, and described as follows: Here follows a specific description as made by Soulard "beginning at a stone on the south bank of the River Des Peres, and running thence, South 140 perches; thence West 515 perches; thence South 120 perches; thence West 165 perches; thence North 890 perches to a white hickory or walnut on said river; thence down the river to the beginning, supposed to contain 4,002 arpents, be the same, more or less."

The tract granted to Reilhe is described in the same precise manner, by metes and bounds, course and distance.

If the deed had stopped here, no doubt could have arisen as to the limit of the grant. But following this description, we have these words:

"Which *two said tracts of land* were subsequently confirmed to Gregoire Sarpy by a Board of Commissioners, appointed with authority to confirm the same, which confirmation was subsequently ratified by act of Congress, being all the lands on the said *River des Peres*, at any time granted to said Gregoire Sarpy under the au-

thority of the Spanish Government, or claimed by him under the said *Antoine Reilhe*, or confirmed to him by the government of the United States, and *being* also, two of the tracts of land heretofore sold by Sheriff Conner to Pierre Chouteau, and by the said Chouteau by deed of 30 June, 1808, conveyed to Madam Labadie, and which *descended from her* (she being now dead) to the said Bernard Pratte and Emile Pratte, &c., &c., &c., and we do hereby give and grant, &c., &c., &c., to said Wilson Hunt, his heirs and assigns all the land which we may be entitled to in, virtue of *said concessions*, or of the confirmation thereof, to have and to hold, &c.

This whole description is contained in *one single sentence.*

It may, however, be said, that the deed contains two references—one to a confirmation by the commissioners, the other to "said concessions."

In regard to the former we say, there was no confirmation by a board of commissioners; and no act of Congress authorizing it, or ratifying it.

The title from Delassus made after the cession of territory by France, was utterly void.

When first presented to the board of commissioners it was rejected.

The act of 26 March, 1804, (2 Stat. 287, 14 sec.,) declared that every act (subsequent to the date of the treaty) of whatsoever nature towards the obtaining any grant, title, or claim, to such lands, be and the same are hereby declared to be, and to have been from the beginning, null and void and of no effect in law or equity." This is accompanied with a proviso in favor of actual settlers to the extent of 640 acres, or a mile square.

So the act of 2 March, 1805, same volume, p. 324, for ascertaining and adjusting titles in the District of Louis-

iana, contains in its 5th section the proviso, "that nothing in the act shall be so construed, as to recognize any grant or incomplete title subsequent to 1 October, 1800, or to authorize the commissioners aforesaid to make any decision thereon."

There is, however, in the record an extract from the report of *Recorder Bates* under date of 2 February, 1816, in which his opinion is expressed, that Sarpy was entitled to a confirmation of a league square, 7,056 arpents, p. 14.

The act of 13 June, 1812, 8 Section, (2 Stat., 752,) expressly restricts the jurisdiction of the recorder to "cases which *had not been decided by the Board of Commissioners.*"

We insist that there was no law authorizing this decision by the recorder, or any act of Congress ratifying it when the act of 1842 was passed. This will be further demonstrated elsewhere.

But assuming that the parties intended to refer to the report of Recorder Bates, and that their reference to a confirmation by the board of comissioners was an inaccuracy only; what is the effect of the reference?

The deed had already described *two tracts of land* by specific boundaries, and then follow the words—"which *two tracts of land* were subsequently confirmed by the board of commissioners."

It is evident that the reference to the confirmation is not made to enlarge the grant but to afford additional evidence of security to the title of the "two tracts" specified.

In addition thereto these two tracts are described also—as "*being* all the lands on the said *River de Peres* at any time granted to Sarpy by the Spanish government or claimed by him under Antoine Reilhe, or confirmed

to him by the Government of the United States, and *being* also two of the tracts of land heretofore sold by Sheriff Conner to Chouteau, and by Chouteau to Madam Labadie, and which *descended* from her to the said Pratte," &c., &c., &c.

At the date of this deed, it is to be remembered, that the only title to land held under the Spanish government by Sarpy on the River Des Peres was by virtue of Soulard's survey for 4,002 arpents. Sarpy had selected to take 1,400 arpents on the Marremeck, and the remainder of his concession elsewhere, in the vacant portions of the royal domain.

This survey was, therefore, "all the lands on the River Des Perres at any time" granted to him. The reference to the confirmation applies to this alone.

We think this is made manifest by the introductory word "being"—which is again used for further description when it precedes the recital of the property conveyed by the sheriff to Chouteau—from him to Madam Labadie, and again describing it as the property which "descended" from her to her heirs.

This word "being" has the signification of the word *same*—and the several descriptions of the property with the use of the word "being" are all made for the single purpose of identification.

The claim under this deed is for 7,056 arpents, nearly double the quantity described in the tract conveyed. If something more, than the Soulard survey was intended we should naturally look for such words following the grant of that tract as "in addition thereto."

We therefore repeat that the reference to the confirmation was not for the purpose of enlarging the grant, but merely for the purpose of affording additional evidence of title to that which was specifically conveyed. If it

had been for the enlargement of the grant, why was not the "league square" mentioned?

Having thus treated the reference made to the confirmation, we now take up that made to the "concessions."

The words are—"we do hereby grant, &c.,———all the land which we may be entitled to, in virtue of *said concessions* or of the confirmation," &c.

What were "said concessions.?" To answer this we must look to the previous description in the deed and we find two recited. One to Sarpy—described in the "figurative plan and certificate of survey made by order of the Lieut. Governor described as follows:" The other a tract conceded to Antoine Reilhe. Both of these are accurately described by course and distance.

There is nothing therefore in this reference to "said concessions" indicating an intent to enlarge the grant, but on the contrary it serves to limit it.

Looking then to the habendum we have these words, "to have and to hold, the said *two tracts of land*, with all ways, waters, woods, privileges, and advantages arising out of or accruing from said concessions or confirmation."

By this we understand that the grant is strictly limited to the "two tracts of lands" with the enjoyment of such privileges, &c., attached thereto, as may be authorized by the concessions or confirmations.

It is not maintained that the habendum could divest an estate granted in the premises of the deed, but if there be doubt as to the property conveyed it is very

efficient for the purpose of ascertaining the intention of the parties.

Following the habendum is the warranty of the "*said lands* and all privileges and advantages *appurtenant thereto*, or arising out of, or accruing from the *same* as above mentioned."

The word "same" refers to the "said lands," and the words "above mentioned," to the privileges, &c., as they are stated in the habendum.

The legal significance of the word "appurtenant" is fully determined in the case of Harvey v. Elliott, (10 Pet. 24,) in which it is stated that land cannot be appurtenant to land.

We have thus before us a deed which opens with a specific description of two tracts of land, and we assume the rule of interpretation to be well settled—that when certainty once appears, and afterwards in the same deed it is spoken indefinitely, reference shall be to the certainty which appears. 3 and 4 Cruise, p. 203.

To same effect is the decision of this court in Parker v. Kane, 22 How. 18.

Jackson v. Stevens, 16 John. 114.

In determining whether 4,002 arpents or 7,056—passed by the deed, we think much emphasis should be given to the fact, that the deed purports to have been made by the grantors as *heirs* of Madam Labadie.

The land conveyed is described as that which *descended* from Madam Labadie.

There is not a word in the deed to show a separate covenant or agreement by Sarpy.

"We do hereby grant"—"we do hereby warrant"—"we do hereby set our hands and seals"—

Here is a joint conveyance. Whatever one conveys—Whatever one warrants, in the absence of any stipulation to the contrary, will be held to be the measure of the conveyance and warranty of all the others.

The construction we have given is the one which Hunt himself seems to have originally entertained—for on the 4 February, 1819—he mortgaged this property to John Jacob Astor. He described it as two tracts of land, "both of which said tracts of land were conveyed by Pratte (and others) *heirs* of Madam Labadie, to W. P. Hunt, together with all and singular, the rights, members and appurtenances, thereto belonging, or in any wise incident or appertaining."

Without, we are to presume that Hunt retained a property conveyed in the deed of 1817 out of this Mortgage to Astor, we have, in this act of his, his own construction of what was the property conveyed to him, and in what character the grantors acted.

This mortgage is recited in the absolute deed subsequently made by Hunt to Astor, and afforded notice to all who come in under Astor.

The opposite construction of this deed of 1817 has been reached by construing it as a sale of Sarpy's *claims*. But, we submit that there is no warrant in the language of the deed to justify such a construction.

How far the warranty will estop the plaintiffs in error depends of course upon its terms. The covenant is to defend the rights, titles, possession and enjoyment, into, and of the said lands, &c.

In Blanchard v. Brooks, the Court say: "The warranty is of the premises, that is, of the estate granted, which was all his right, title and interest; a conveyance

of all the right, title, and interest in lands, is certainly sufficient to pass the land itself, if the party conveying had an estate therein at the time of the conveyance; but it passes no estate which is not there possessed by the party. The grant in legal effect operated only to pass the vested interest, and the warranty being coextensive with the grant, did not extend to the contingent interest, and of course did not operate on it by way of estoppel." 12 Pick., 67.

Reference is made in this decision to the case of Brown v. Jackson, 3 Wheat., 440.

In the case of Miller vs. Ewing, where the conveyance was of all the right, title and interest in the land, with the usual habendum, "so that neither the grantor nor any person claiming under him, shall have, claim," &c., it was held that this was a good qualified warranty; but the Court said: "John Miller and his brothers, when they conveyed to Ball and Day, *with warranty against themselves*, and *their heirs*, had an estate and interest derived by descent from their father, and to this alone the grant and warranty applied. They are therefore not estopped by the warranty from claiming the estate by a new and distinct title." 6 Cushing, 40.

These cases are cited to show that general words of warranty will be construed by the limitations expressed in the deed.

But here the warranty needs no construction;—it extends by its own limitation only to the "*said lands*, and all the privileges and advantages, thereunto appurtenant, or arising out of, or accruing from the *same*—that is, the "said lands."

The "said lands" are those described in the habendum immediately preceding the warranty, as "the two tracts of land, with all the ways, waters, woods, privileges and

advantages, arising out of or accruing from said concession, or confirmation, above mentioned. All these privileges and advantages, however extensive, are those only which are attached to the two tracts of land.

Statute of Limitation.

The original concession to Sarpy being void, the alleged confirmation by Recorder Bates without any authority, and therefore giving no support to the survey made thereon in 1818, the heirs of Sarpy, as well as those claiming under the deed of 1817, executed by the heirs of Madam Labadie, were wholly dependent on the bounty of Congress. The land was part of the public domain.

That bounty is expressed in the act of 1842, the terms of which have been already cited.

The act is *directory* merely. It requires the proper officers to issue a patent to "Gregoire Sarpy, or his legal representatives." It is neither a confirmation nor a grant. It is nothing but a governmental direction.

No title passed out of the government to the lands described by virtue of its provisions.

The reference to the patent certificate and the survey was for the purpose only of designating the limits of the land for which the patent was to issue.

There are no words of grant in the act itself, which vests a title to the land described. Had Congress repealed the act before the patent was issued, it would have been a vain attempt for any of these parties, as against the grantee of the government, or against the government itself, to have asserted a title on the prior action of the government officials, or on the allegation that the government was estopped by its reference to the patent certificate and survey in asserting their invalidity.

As the sole purpose of the act was to direct the issual of a patent, we maintain, on the repeated decisions of the court, that the title did not pass out of the government until this was done.

Wilcox v. Jackson, 13 Pet., 516.

If this view be correct, there is no statute of limitations applicable to these cases.

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Morrison and Wife v. Jackson, No. 139.

This brief is filed, as well in No. 139, of same parties against Jackson, and the same assignment of errors is made in Jackson's case as in this—the two cases depending on the same facts, and will be tried together.

P. PHILLIPS,
for Plaintiff in Error.